



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding DOWNTOWN SUITES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** CNL FFT

### **Introduction**

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing with their legal counsel, and were given a full opportunity to be heard, to present evidence and to make submissions.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application. In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's application. Counsel for the landlord testified that they had only received one package from the tenants, which was served on December 13, 2022, containing the title search for the property. After reviewing the contents of the tenants' evidence with the landlord, counsel for the landlord confirmed that they were okay with proceeding with the hearing as scheduled. The landlord did not submit any written evidence for this hearing.

The tenants confirmed receipt of the 2 Month Notice, dated September 26, 2022, which was sent by way of registered mail. I find the tenant deemed served with the 2 Month Notice in accordance with sections 88 and 90 of the *Act*, 5 days after mailing.

**Preliminary Issue: Name of Landlord**

The landlord confirmed in the hearing that the named landlord on the tenant's application is the property management company for the landlord. The landlord confirmed their proper legal name, which is reflected on the 2 Month Notice.

I am satisfied that the proper name of the landlord was not included on this application, which is reflected on the 2 Month Notice served on the tenants. Accordingly, the tenants' application was amended to include the name of the landlord in addition to the property management company.

**Issues(s) to be Decided**

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began as a fixed-term tenancy on August 1, 2018. The tenants currently pay \$6,000.00 in monthly rent, payable on the first of every month. The landlord still holds the security and pet damage deposits for this tenancy.

The tenants were served with a 2 Month Notice to End Tenancy on September 26, 2022, with an effective date of November 30, 2022 for the following reason:

*"The landlord is a family corporation, and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit."*

The landlord provided the following submissions for why they require this rental unit. The landlord submits that the sole shareholder of the family corporation is the person named on the title search provided in evidence by the tenants, MS. MS attended the hearing and testified that they are 64 years of age, and will be 65 on March 18, 2023. MS testified that they had purchased the rental unit in 2004 when they were working at the local university for approximately three years. MS purchased the property with the intention to live there during retirement. MS currently lives and works overseas, and is a

plastic surgeon who wants to retire from their practice, and move to Canada for their retirement.

MS testified that they hold all the shares in the family corporation, and that the shares will be distributed as per the will for estate planning purposes.

MS testified that they do own homes in multiple countries, including a villa where they currently reside, a house in London, and numerous rental properties in Canada. MS testified that they invest in properties, but did not want to provide the specific details of these properties for this hearing as they did not feel this information is relevant to the proceedings, and they did not want to divulge private information. MS testified that they have a special attachment to this city, and plan to retire here. MS testified that the other properties they own are not suitable for their own occupation as they are too small and purchased as revenue properties. This specific rental unit is a luxury 2400 square feet home, which the landlord testified was not purchased as an investment property, and was only rented out to comply with legislation while the landlord was residing overseas. The landlord testified that the home is currently rented out at a loss.

The tenant disputes that the 2 Month Notice was issued in good faith, and references a previous dispute between the parties over a 10 Day Notice to End Tenancy for Unpaid Rent which was served on them on January 19, 2021. The May 19, 2021 decision references a dispute between the parties over the amount of monthly rent. The tenants were successful, and the 10 Day notice was cancelled. Counsel for the tenants also argued that the landlord failed to provide evidence of who the shareholders are of this family corporation, or sufficient evidence to show that the MS truly requires this residence to retire in, especially considering the multiple properties owned by MS.

### **Analysis**

Subsection 49(4) of the *Act* sets out that a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit, which is the reason for why the landlord issued the 2 Month Notice. The tenants disputed this notice, arguing that the landlord did not issue the Notice in good faith.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*“If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then*

*that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”*

Although the landlord stated that they had issued the 2 Month Notice in order to occupy the rental unit during their retirement, I find that the tenants have raised doubt as to the true intent of the landlord in issuing this notice.

I find that the landlord has not met their burden of proof to show that they will be occupying this home, and that is the only reason for ending this tenancy. I find the landlord's testimony to be vague, and lacks sufficient detail to support what specific steps they plan to take, or have taken, to retire in this city, and live in this specific suite. It is undisputed by the landlord that they own multiple properties, but the landlord did not want to disclose further details for privacy concerns. Taking in consideration the landlord's desire for privacy and confidentiality, I do not find this explanation to be a reasonable one as the landlord could have redacted personal and confidential information from the evidence submitted.

Although the landlord did provide an explanation for why this particular suite was chosen over other local properties owned by the landlord, the landlord did not support this explanation with detailed or documentary evidence. Considering the fact that the landlord has the burden of proof, I am not satisfied that the testimony provided establishes why this specific tenancy must end in order to accommodate the landlord's retirement plans. The onus on the landlord to establish their true intent is even more significant considering the fact that there was a previous dispute between the parties in 2021 over the amount of monthly rent, which brings into question the true reason for why the landlord wants to end this tenancy.

Lastly, the landlord did not provide any documentation to support that the landlord is a family corporation, and who the specific shareholders are. As this information is relevant to this application, and important for determining whether the 2 Month Notice is valid, I find that the landlord's evidence falls short.

For all these reasons, I allow the tenants' application to cancel the 2 Month Notice dated September 26, 2022. This tenancy is to continue until ended in accordance with the *Act*, regulation, and tenancy agreement.

As the tenants were successful in this application, I allow the tenants to recover the filing fee for this application.

### **Conclusion**

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated September 26, 2022, is cancelled. This tenancy is to continue until it is ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 15, 2023

---

Residential Tenancy Branch