



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding COLDWELL BANKER PRESTIGE  
REALTY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants November 08, 2022 (the “Application”). The Tenants applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated December 31, 2022 (the “Notice”)
- To recover the filing fee

The Tenants appeared at the hearing. L.Z. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The only relevant evidence submitted by the Tenants was a copy of the Notice. The Landlord did not submit any evidence. L.Z. confirmed receipt of the hearing package and did not raise an issue with service of this.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?

2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The parties agreed there is a written tenancy agreement between them.

The Notice was submitted. The Notice was issued by the Landlord. The ground for the Notice is that the Landlord or Landlord's spouse will occupy the rental unit.

The parties agreed the Notice was served and received October 31, 2022.

L.Z. advised that the Landlord, which is a company, represents the owner of the rental unit, Y.Q. L.Z. said Y.Q. intends to move into the rental unit.

I told L.Z. the Landlord, as a company, cannot issue the Notice. L.Z. said there was nothing put in writing sent to the Tenants with the Notice stating that Y.Q. is the owner of the rental unit and intends to move into the rental unit.

I asked the Tenants if they agreed to the Notice being amended to show Y.Q. as the landlord who issued it. One of the Tenants did not seem to take an issue with this although their answer was not entirely clear. The second Tenant did not agree to the change.

### Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord **who is an individual** may end a tenancy in respect of a rental unit if **the landlord or a close family member of the landlord intends** in good faith **to occupy the rental unit.**

Section 49(4) of the *Act* is similar to section 49(3) but relates to a landlord that is a family corporation.

Section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and **must**

- (a) be signed and dated **by the landlord** or tenant **giving the notice**,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], **state the grounds for ending the tenancy...**
- (e) when given by a landlord, be in the approved form.

The Notice was issued by the Landlord, a company. The Landlord is the only landlord named on the Notice. Y.Q.'s name does not appear anywhere on the Notice. The Landlord did not include a letter or written statement with the Notice stating that Y.Q. is the owner of the rental unit and intends to move into the rental unit and this is why the Notice is being issued.

I understand that the Landlord acts as agent for Y.Q. However, the Landlord, as a company, cannot issue the Notice. The Landlord is not a family corporation. The Landlord is obviously not intending to move into the rental unit. The Notice had to be issued by Y.Q.

The Notice does not name Y.Q. anywhere on it. I find this problematic for two main reasons.

First, the whole point of the Notice is to advise the Tenants of why the tenancy is ending and who intends to move into the rental unit so that they can assess this claim, decide whether to dispute it and obtain evidence in relation to it. The Notice does not advise the Tenants of why the tenancy is ending or who intends to move into the rental unit because it is issued by the company Landlord, which obviously is not intending to move into the rental unit, and does not name Y.Q. anywhere on it.

Second, the Notice comes with compensation requirements if the Landlord does not follow through with the stated purpose of the Notice pursuant to section 51 of the *Act*.

The Tenants should see on the Notice who is stating that they intend to move into the rental unit so that, if this does not occur, the Tenants know who has failed to follow through with the stated purpose of the Notice and who is taking responsibility for issuing the Notice. Here, the Landlord cannot follow through with the stated purpose of the Notice (because the Landlord is a company), cannot move into the rental unit and has no intention of moving into the rental unit. For the purposes of section 51 compensation, the Notice had to be issued by Y.Q.

Given the Tenants did not agree to the Notice being amended, I declined to amend the Notice to include Y.Q. rather than the Landlord.

Given the above, I find the Notice does not comply with section 52 of the *Act* because it does not state the name of the landlord who is issuing the Notice, Y.Q., and does not state the grounds for the Notice because nowhere on the Notice does it state that Y.Q. owns the rental unit and intends to move into the rental unit. Given this, I find the Notice is not valid and cancel the Notice. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenants have been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants can deduct \$100.00 from their next rent payment.

### Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*. The Tenants can deduct \$100.00 from their next rent payment as reimbursement for the filing fee.

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

Dated: March 20, 2023

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Residential Tenancy Branch