



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **CNL, FFT**

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- cancellation of the landlord’s Two Month Notice to End Tenancy for the Landlord’s Use pursuant to section 49 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing with the landlord TK appearing. The tenant, JF appeared for herself with advocate MM.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenants confirmed receipt of the Two Month Notice to End Tenancy (“Two Month Notice”) dated November 20, 2022, with an effective date of January 20, 2023. The landlord confirmed receipt of the dispute notice and the tenant’s materials. Service for both parties complies with sections 88 and 89 of the Act.

### **Preliminary Issue**

Pursuant to section 53 of the Act, the effective date of the Two Month notice is changed to January 31, 2023.

Issue(s) to be Decided

1. Is the Two Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced January 1, 2018 and is currently month to month. Rent is \$1,100.00 per month due on the first of the month. The landlord holds a security deposit of \$550.00 in trust for the tenant. The tenant still occupies the rental unit.

The landlord testified that his adult son who attends university wishes to occupy the rental unit. The landlord lives in the upstairs suite. The landlord's son had a room in the landlord's home but wishes his own space. The landlord's son recently moved into the university residence, but does not wish to live there long term. His son only moved into the residence because the tenant has not vacated the rental unit.

The tenant testified that she has always been a good tenant and does not wish to leave the rental unit. She stated that the landlord has been asking her to move for some time and has also been asking for a rent increase. She testified that her son and the landlord's son are friends and she understands from her son that the landlord's son is not moving into the rental unit. The tenant feels that the landlord just wishes to rent out the suite for more money.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the Two Month Notice served on the tenant.

The landlord has the burden in this instance of proving that she or a close relative intends to occupy the rental unit. The landlord has testified under oath that her son is a

university student and wishes to live in the rental unit while attending post secondary education. I accept the tenant's evidence that the son is currently living in a dorm, but I also accept the landlord's evidence that the son lives in a dorm because he cannot occupy the rental unit until the tenant vacates the rental unit.

Neither party provided any documentary evidence to support their position. The landlord in particular could have provided a statement by her son of his intention to move in, or could have produced him as a witness in the hearing. The only evidence before me is the oral evidence of both the landlord and the tenant. Given that the landlord has the onus on a balance of probabilities to establish the use of the rental unit, I find that the landlord has not satisfied their onus. It is not simply enough in this circumstance to state the intention, evidence corroborating the landlord's intention is necessary in this case to satisfy their onus.

The tenant's application is granted and the Two Month Notice is cancelled. As the tenant is successful, the tenant is also entitled to recover the filing fee for the application.

### Conclusion

The tenant's application is granted. This tenancy shall continue until it is ended in accordance with the *Act*. The tenant is entitled to deduct \$100.00 from one month's rent on a one time basis in satisfaction of 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 *Residential Tenancy Act*.

Dated: March 12, 2023

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Residential Tenancy Branch