



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

**Dispute Codes** CNL, MNDCT, RP, PSF, OLC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to 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;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

The tenant confirmed receipt of the 2 Month Notice dated September 29, 2022, which was personally served on the tenant. In accordance with section 88 of the Act, I find that the tenant duly served with the 2 Month Notice.

### **Preliminary Issue – Tenant's Other Claims**

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The dispute resolution process is intended to be a fair, efficient, and effective process where a decision can be delivered in a timely manner. As the priority claim relates to a Notice to End Tenancy and the continuance or end of this tenancy, and the time allotted is not sufficient to allow all of the tenant's claims to be heard, I exercise my discretion to dismiss the claims unrelated to the 2 Month Notice with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

### **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?

Is the tenant 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 month-to-month tenancy began on September 1, 2020. Monthly rent is currently set at \$1,475.00, payable on the first of the month. The landlord holds a security and pet damage deposit in the amounts of \$750.00 each deposit for this tenancy.

The landlord served the tenant with a 2 Month Notice on September 29, 2022, with an effective move-out date of January 1, 2023 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent or child of that individual's spouse).

The landlord provided the following explanation for why they want to end the tenancy. The landlord provided sworn testimony during the hearing, as well as a written statement in their evidence. The landlord testified they intend to move into the suite with their husband. The tenant's suite is part of a fourplex owned by the landlord, and the tenant's unit is located on the lower floor, and was built for easy access it was originally built for the landlord's 86 year old mother. The landlord testified that their husband is scheduled for knee surgery in April 2023, and a second surgery six months later. The landlord testified that their 35 year old home requires extensive repairs and maintenance, and they plan on performing these repairs before the surgery. The landlord testified that they have severely damaged lungs due to massive blood clots, and cannot be around construction dust or asbestos. The landlord submits that they require the tenant's rental unit during the renovations and knee surgery recovery. The landlord submitted photos of the areas of the home which they need to renovate.

The tenant questioned why the landlord did not submit any evidence to support the upcoming knee surgeries and medical issues, and also questioned whether the photos submitted were of the landlord's residence. The tenant argued that the landlord owned multiple units, and questioned why the landlord requires this specific rental unit, especially considering the fact that there was a previous dispute involving the tenant, landlord, and upstairs tenant. The tenant argued that the landlord had an ulterior motive to end the tenancy after being unsuccessful at the last hearing.

The landlord responded in the hearing that they did not want to disclose personal information such as their home address or confidential medical records. The landlord testified in the hearing that the tenant was their only problem tenant, and although they were a landlord, they felt like a teacher and wished that all their tenants could get along. The landlord denies any special relationship with the upstairs tenant, and emphasized that the tenant's suite is the only rental unit without stairs.

### **Analysis**

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlord testified that they intend to move in with their husband while they renovate their home, and while their husband recovers from knee surgery.

*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.”*

As the tenant had raised doubt as to the true intent of the landlord in issuing the 2 Month Notice, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

I find that the landlord has not met their burden of proof to show that they need to end this tenancy for the purpose of occupying it, and that is the only reason for ending this tenancy. Despite the explanation provided about why they require this specific rental unit, and why they did not provide any medical documentation to support the medical issues described, the burden is on the landlord to support their intention to occupy the rental unit. The landlord did not submit any documentation, doctor's notes, or even a written confirmation of the upcoming surgeries. I find that the landlord's evidence falls short in supporting the credibility of the statements provided for this hearing.

Furthermore, although the landlord submitted photos of what the landlord testified was their current home, the landlord did not provide specific details such as a scope of work from their contractor or estimates, and timelines for the specific work required. I find the evidence vague, and lacks clear and specific detail of what work is required, and how and when the work would be undertaken. 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.

Lastly, I find the tenant raised considerable doubt as to the landlord's motives for ending this tenancy. As noted by the tenant, the landlord had attempted to end this tenancy on at least one occasion in the past by serving the tenant with a 1 Month Notice to End Tenancy, but was unsuccessful in doing so. The landlord is clearly unhappy with the

tenant, as expressed by the landlord in this hearing when they described the tenant as “my only problem tenant”.

Not only am I not satisfied that the landlord has provided sufficient evidence to support why they need to move into the tenant’s rental unit, I find that the landlord has not met the burden of proof to show that they do not have any ulterior motives. Accordingly, I allow the tenant’s application to cancel the 2 Month Notice. The landlord’s 2 Month Notice, dated September 29, 2022 is hereby cancelled and is of no continuing force and effect. This tenancy is to continue until ended in accordance with the *Act*.

As the tenant was successful with their application, I allow the tenant to recover the filing fee.

### **Conclusion**

The tenant’s application to cancel the landlord’s 2 Month Notice is allowed. The landlord’s 2 Month Notice, dated September 29, 2022, is cancelled and is of no continuing force or effect. This tenancy is to continue until it is ended in accordance with the *Act*.

I allow the tenant 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 tenant is 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.

The remainder of the tenant’s application is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

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 13, 2023

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Residential Tenancy Branch