



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 6497;
2. An Order for the Landlord’s compliance - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. No issues were raised in relation to the evidence of either Party.

### **Preliminary Matter**

The Tenant claims an order for the Landlord to comply with drying out the house after a leak.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the compliance claim is not related to the matter of whether the tenancy will end, I dismiss this claim with leave to reapply.

### **Issue(s) to be Decided**

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: the tenancy of an upper suite in a house started on August 1, 2017. At the outset of the tenancy the Landlord collected a security deposit of \$825.00. Rent of \$1,650.00 is payable on the first day of each month. On January 12, 2023 the Landlord gave the Tenant a two month notice to end tenancy for landlord's use dated January 12, 2023 (the "Notice"). The Notice sets out as the reason for ending the tenancy that the Landlord's father or mother will occupy the unit.

The Landlord states that the unit will be occupied by both parents who currently live with the Landlord. The Landlord states that the father has medical and mobility issues, and the family home is not suitable as it does not have any bedrooms on the main floor. The Landlord states that they are also bringing in a live in caregiver from another country to take care of the father and that the family house does not have that extra room for a caregiver. The Landlord states that the caregiver is waiting for the visa approval and that no flights have yet been arranged for the caregiver. The Landlord states that the unit is suitable for the parents as it is only a block away from their physician and is on the ground floor. The Landlord states that although the caregiver will not have a driver's licence the caregiver will be able to walk the father to the physician's office. The Landlord provides a letter from the father's physician dated September 12, 2022.

The Tenant states that the Landlord does not have a good faith intention for the parents to occupy the unit and that the Notice was served in retaliation for the Tenant raising issues with a flood that occurred in the lower unit with another tenant. The Tenant states that the flood was all over the unit and inside the lower furnace room that is shared by both the Tenant and the lower unit. The Tenant states that the flood occurred on December 27, 2022 and that the Landlord brought in a kerosene heater for the lower unit that has no windows. The Tenant states that the lower unit is not a legal suite. The Tenant states that they became ill from the smell of the heater below that became very strong by December 30, 2022. The Tenant states that they informed the Landlord of the

problem with the smell however the Landlord only told the Tenant that the smell would end in a couple of days. The Tenant states that they asked the Landlord to replace the kerosene heater with an electric heater however the Landlord refused so the Tenant purchased an electric heater and gave it to the lower tenant. The Tenant states that on January 12, 2023 they called the fire department about the heater issues and after speaking with them the Tenant asked the Landlord for the Landlord's mailing address to send the Landlord a written request to remove the heaters. The Landlord replied that the Landlord would be at the unit later in the day. The Tenant states that the Landlord then came and gave the Tenant the Notice that same day. The Tenant states that on January 13, 2023 the fire department came to inspect and informed the Landlord that the kerosene heater had to be removed and to put in proper dryers. The Tenant states that up to this point there had been no issues between the Tenant and the Landlord and that the Tenant feels that the Landlord is seeking to end the tenancy in retaliation for the Tenant's actions in relation to the kerosene heater and the fire department.

The Tenant also believes that the Landlord is not acting in good faith as the Landlord owns the house right next door and that this house has been vacant for over a year until March 2023 when new tenants moved in. The Tenant states that this house was available for the parents to reside in as it has the same layout as the Tenant's unit and has one or more bedrooms on the main floor. The Tenant states that the house next door has been renovated and was ready to live in for some time. The Tenant finds it suspicious that it was only rented out after the Notice was given. The Tenant states that the Landlord had informed the Tenant some time ago that the eventual plans were to demolish the house along with the next-door house in order to build apartment units.

The Tenant states that the Landlord has no respect for and does not follow rules and regulations. The Tenant gives the example of the lower unit being inspected by the city bylaw officers last year. The Tenant states that prior to the inspection the Landlord removed the stove from the lower unit and after the inspection returned the stove to the unit. The Tenant states that the Landlord told the Tenant that the Landlord is building a

new home with many suites, that the parents would be living with the Landlord at this new home and that this new home is almost completed. The Tenant states further that the Tenant's unit is not safe for the parents and provides photos of the unit and in particular the stairs to an exterior entrance that the Tenant states are completely rotten.

The Landlord states that the next-door house is owned by the Landlord and a couple of other family members and that because the Landlord alone does not own this house the Landlord could not insist that the parents could reside there. The Landlord states that they will be moving to a farm and is not suitable as the parents are not able to walk. Further the caregiver will not have a driver's licence to take the father to see the physician that is only a block away from the Tenant's unit.

### Analysis

Section 49(3) of the Act provides that 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. The Tenant gave undisputed evidence of the issues with the flood in the lower unit, the illegal nature of the lower suite, the actions of the Landlord when the lower suite was inspected by the bylaw officers and the inspection by the fire department. The Tenant also gave undisputed evidence that the Landlord originally told the Tenant that the parents would live with the Landlord in the new home on the farm. It is undisputed that the Landlord served the Notice immediately after the Tenant asked the Landlord for the Landlord's mailing address and immediately after calling the fire department. The Landlord has not provided any evidence from the father or mother of the Landlord to support that they will move into the unit. The Landlord's reason for not using the next-door house for the parents did not ring true considering that the next-door house is also owned by other family members. Further it is undisputed that the physician's letter is dated for a time when the next-door house was vacant. There is no supporting evidence that a caregiver is being brought in to care for the parents. Finally, I find it dubious that the Landlord would give evidence of their father's mobility problems and yet have the father reside in a unit with rotten exit

stairs, as shown by the Tenant's photos. For these reasons I find that the Landlord has not substantiated that they have the good faith intention to end the tenancy for the parents to occupy the unit. The Notice is therefore cancelled, and the tenancy continues.

As the Tenant has been successful with their claim, I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

### Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: May 15, 2023

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Residential Tenancy Branch