



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, MNDCT, AAT, LRE

### Introduction

On January 18, 2023, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) dated January 2, 2023, for a monetary order for compensation for monetary loss or other money owed, for an access order to the unit or site for the tenant and their guests, and for an order to suspend or set conditions on the landlord's right to enter the rental unit or site. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters - Related Issues

I have reviewed the Tenant’s application, and I note that they have applied to cancel a Notice to end tenancy as well several other issues. I find that these other issues are not related to the Tenant’s request to cancel the Notice. As the other matters do not relate

directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

**2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenant's claims for a monetary order for compensation for monetary loss or other money owed, for an access order to the unit or site for the tenant and their guests, and for an order to suspend or set conditions on the landlord's right to enter the rental unit or site.

I will proceed with this hearing on the Tenant's claim to cancel a Two-Month Notice.

Issues to be Decided

- Should the Notice dated January 2, 2023, be cancelled?
- If not, are the Landlords entitled to an order of possession?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that they received the Landlord's Notice to end their tenancy on January 3, 2023, through door service. The Notice recorded that the Tenant was required to vacate the rental unit as of March 5, 2023. The reason checked off by the Landlord within the Notice was as follows:

- 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).

Please indicate which close family member will occupy the unit.

- The child of the landlord or the landlord's spouse

The Landlord testified that their daughter will be moving into the rental unit, as they need more space in their unit upstairs.

The Tenant called a witness, who provided a written and verbal statement to these proceedings. The Tenant's witness testified that when they were speaking with the Landlord the Landlord had advised them that it was a family cousin that was moving into the rental unit, not the Landlord's daughter, and that it was the Landlord's intent to renovate the rental unit first. The Tenant submitted a written statement and a text message history into documentary evidence.

The Tenant also submitted that the Landlord's daughter is only 17 and they believed it was unlikely that a minor would be living in the unit.

### Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the documentary evidence provided by the Tenant that they received the Landlord's Notice on January 3, 2021. Section 49 of the *Act* states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. Accordingly, the Tenant had until January 18, to dispute the Notice. In this case, The Tenant filed to dispute the Notice on January 18, 2021, within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

*"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).*

*If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.*

*If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.*

*If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.*

*The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.”*

I have reviewed the testimony and documentary evidence submitted by the Tenant and I find that the Tenant has provided sufficient evidence to demonstrate that this Landlord may have had an ulterior motive when they issued their Notice to end this tenancy.

As stated above the burden is on the landlord to establish that they truly intend to do what they stated in their Notice to End Tenancy. It was noted that the Landlord did not submit any evidence beyond their own verbal statements to these proceedings.

In the absence of any evidence to the contrary, I find that there is sufficient evidence to demonstrate to my satisfaction that this Landlord had ulterior motives when they issued their Notice to end this tenancy. Consequently, I grant the Tenant's application to cancel the Notice dated January 2, 2023, and find that the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the *Act*.

Finally, during the hearing, the Tenant requested that section 29 of the *Act* be reviewed with both parties and recorded in the decision for these proceedings.

Section 29 of the *Act* states the following regarding a landlord's right to access the rental unit during a tenancy:

***Landlord's right to enter rental unit restricted***

*29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

*(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*

*(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*

*(i) the purpose for entering, which must be reasonable;*

*(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*

*(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*

*(d) the landlord has an order of the director authorizing the entry;*

*(e) the tenant has abandoned the rental unit;*

*(f) an emergency exists and the entry is necessary to protect life or property.*

*(2)A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).*

Both parties were reminded that a landlord may **only** access a rental unit if written notice is issued that state a reasonable purpose for the entry, and indicated a reasonable time window for entry.

Both parties are advised that the written Notice must be in writing and served to the Tenant in an approved method that allows for service timelines to be observed.

The Act recognizes five methods of service, detailed below:

1. Served personally;
  - a. deemed received immediately and allows for access 24hrs later.
2. Served by attaching to the front door;
  - a. deemed received on the third day after it is attached and allows for access on the fourth day.
3. Served by leaving a copy in a mailbox or mail slot;
  - a. deemed received on the third day after it is left and allows for access on the fourth day.
4. Served by fax;
  - a. deemed received on the third day after it is faxed and allows for access on the fourth day.
5. Served by mail;
  - a. deemed received on the fifth day after it is mailed and allows for access on the sixth day.
6. Served by Email,
  - a. deemed received on the third day after it is emailed and allows for access on the fourth day. **This method may only be used if there is an agreement for email service.**

The Landlord and Tenant are advised that under-the-door and text messages are **not** recognized methods of services under the *Act*.

Conclusion

The Tenant's application to cancel the Notice dated January 2, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

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: May 12, 2023

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Residential Tenancy Branch