



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT; OPL, FFL

### Introduction

This hearing dealt with an application by the tenants under the Residential Tenancy Act (The Act) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the landlord under the Residential Tenancy Act (the Act) for the following:

- An order of possession under a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") pursuant to sections 49 and 55.
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

The tenants attended with the advocate LH ("the tenant").

The agent GC attended for the landlord ("the landlord") who did not attend.

This is a continuation of a hearing which began on February 17, 2023, and was adjourned by my Interim Decision of that date.

I explained the hearing process. Each party had the opportunity to ask questions and to call witnesses, present affirmed testimony and submit evidence.

### *Service*

The landlord submitted two amendments changing his address.

Each party acknowledged receipt of the other party's documents.

I find service complied with the Act.

### Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the landlord's Two Month Notice?

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The parties submitted substantial evidence, conflicting information and testimony. The parties disagreed on many issues.

In this Decision, I will not summarize or address all documentary evidence and testimony. I will only address admissible, relevant, essential evidence which underpins my findings relating to the issues.

### *Burden of Proof*

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice.

*Residential Tenancy Branch Rules of Procedure - Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy, the landlord must present their evidence first.

Consequently, even though the tenant applied for dispute resolution and is the Applicant, the landlord presented their evidence first.

### *Application*

This is an application by the tenant to cancel a Two Month Notice issued by the landlord. The tenant asserted the Notice is not issued in good faith and is issued in response to the tenant's refusal to pay an unlawful rent increase. The landlord denied the claim and requested an Order of Possession.

### *Tenancy*

The parties agreed to the background of the tenancy. The tenant submitted a copy of the tenancy agreement.

The tenancy began February 1, 2021, and is ongoing. Rent is \$2,200.00 monthly. The tenant provided a security deposit of \$1,100.00 which the landlord holds.

The unit is a laneway house on property owned by the landlord on which there are other rented units.

### *Two Month Notice*

The parties agreed the landlord issued a Two Month Notice dated September 27, 2022, requiring the tenant to move out by November 30, 2022. The reason for the Notice is that the landlord is moving in.

The tenant acknowledged service. The landlord acknowledged the tenant applied to cancel the Notice within the permitted time.

A copy of the Notice was submitted which is in the standard RTB form.

### *Landlord's Testimony*

The landlord has recently started a new casual job. He is required to report to work twice a day during the week for the next two years. The landlord's current drive to work is 45 minutes. In contrast, the travel time from the unit is 15-20 minutes. He wants to move to the unit for a shorter commute.

The landlord submitted an affidavit signed by him and a copy of his employment identification.

### *Tenant's Testimony*

The tenant testified as follows.

The parties have an ongoing dispute about many issues. The tenant is preparing an application to the RTB to address these issues.

The parties' good relationship ended when the landlord requested an unlawful rent increase in February 2022. The relationship deteriorated and is now acrimonious. The landlord has been resentful towards the tenant ever since. The primary purpose of the Notice is payback.

The tenant testified the landlord is making multiple efforts to get them out. The tenant submitted copies of many emails between the parties in which the tenant protests the landlord's actions. The landlord or his lawyer have replied denying the tenant's concerns.

The landlord previously tried to evict the tenant. On March 2, 2022, the landlord issued a One Month Notice which the tenant disputed. The One Month Notice was set aside by an Arbitrator in a decision dated June 23, 2022. The file number is referenced on the first page.

The landlord instructed the tenant to pay rent paid by bank transfer. After this, the landlord refused to accept the transfers and now demands payment by bank draft which is time consuming and costly.

On June 14, 2022, the landlord cut off the tenant's access to the laundry areas while the tenant was at work. Access has not been restored.

The tenant submitted a copy of a letter dated September 7, 2022, to the landlord which sets out multiple complaints. The above complaints are listed. Additional complaints are that the landlord will not permit the tenant to take a roommate, the utility bills are not properly shared, garbage is not sanitary or well managed and the unit smells, the

security camera has been turned off and the internet disconnected. The tenant also complains about the landlord coming to the unit, questioning the tenant's guests, frequently calling, and threatening the tenant.

The tenant said the landlord could occupy another unit which was available before this Notice was issued.

The tenant believed the landlord could rent the unit at substantially higher cost.

### *Landlord's Reply*

The landlord did not attend the hearing. The landlord's agent denied the tenant's claims and asserted the only motive in the issuance of the Notice was for the landlord to move in.

The landlord denied seeking revenge or retaliation as claimed by the tenant. They objected to the tenant's statements as false.

### *Summary*

The tenant requested the Notice be cancelled as the landlord did not issue it in "good faith".

The landlord requested an Order of Possession.

### Analysis

While I have turned my mind to the documentary evidence and the testimony, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

### *The Act and Guidelines*

To evict a tenant for landlord's use of the property, the landlord has the burden of proving the reasons on the Notice. The parties had contrasting narratives which were provided in detail in the hearing.

The tenant raised the issue of the intention of the landlord in issuing the Notice. The tenant questioned whether the landlord's plan to move in was genuine. The tenant expressed a lack of confidence in the landlord's stated plan. The tenant argued the landlord issued the notice in retaliation for the tenant's refusal to pay more rent. The Notice is part of a plan to force the tenant to move out.

The tenant asserted that the landlord has not issued the Two Month Notice in good faith but instead simply wants to get rid of the tenant, once a valued tenant, and now estranged. The motive, the tenant asserted, is retaliation.

The tenant also said the landlord could rent the unit for substantially more rent than paid by the tenant. As well, the landlord could have chosen the other accommodations and there is no clear explanation why he chose the unit to move into.

*The Residential Tenancy Branch Policy Guideline # 2* states *good faith* is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Two Month Notice.

This Guideline says that the landlord must show they have no other motive. Otherwise, the question is whether the landlord had a dishonest purpose.

The Guideline directs me to consider motive in deciding whether to uphold the Notice. When the landlord's good faith is called into question, the landlord must show they truly intend to do what they said on the Notice. The landlord must also establish that they do not have another purpose that negates the honesty of intent. They must not have an ulterior motive for ending the tenancy.

### *Credibility*

The tenant's testimony was straightforward and matter of fact. Their testimony was supported in most aspects by documentary evidence such as exchange of emails. The tenant's testimony about multiple escalating disputes with the landlord was supported by the evidence. The landlord's denial does not ring true given the multiple issues.

I find the landlord's evidence does not have a ring of truth. I conclude it is not reliable or credible.

I find the tenant's version of events is the most likely to be true. I therefore give the tenant's evidence the most weight. Where the parties evidence differs, I prefer the tenant's evidence.

### *Findings*

The tenant has raised the good faith intention of the landlord which I find has some basis.

While the landlord denied they hold any resentment or ulterior motive, I accept the tenant's testimony that the parties acrimoniously argued over multiple issues as testified by the tenant.

I accept the tenant's testimony that they refused to pay a rent increase. Since then, they have been denied access to the laundry and have complained about the landlord's conduct with guests, to name just two of the subsequent issues.

I have carefully considered the evidence. I find that there was a conflict between the parties with its origins in the refusal to pay rent.

I find that the timing of the Two Month Notice during the intensity of these ongoing, unresolved disputes, raises doubts about the bona fide intentions of the landlord.

While the landlord provided some explanation about the reason for issuing the Notice, I find that I am not wholly convinced that there are no other factors which have given rise to the Notice.

I find there are reasonable doubts about the intention of the landlord occupy the unit. The landlord submitted no documentary evidence in support of their claim other than to confirm his employment. I find the landlord has not met the burden of proof that they intend to do what they said in the Notice.

In any event, while the landlord may indeed intend to use the rental unit for the purposes stated on the Notice, I find there may be additional reasons fueling the issuance of the Notice. I find the landlord has not met the burden of proof that they do

not have an ulterior motive in issuing the Notice. Therefore, I find that the good faith argument has merit.

Consequently, I cancel the Two Month Notice. This tenancy will continue until it is ended in accordance with the agreement and the *Act*.

As the tenant have been successful in this application, the tenant is entitled to be reimbursed for the filing fee. Pursuant to section 72, the tenant is authorized to deduct this amount from rent payable in the amount of \$100.00 for one month only.

### *Summary*

I grant the tenant's application.

The landlord's application is dismissed without leave to reapply.

### Conclusion

The tenant's application to cancel the Two Month Notice is allowed. The Two Month Notice has no continuing force or effect. This tenancy will continue until ended according to 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: June 15, 2023

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Residential Tenancy Branch