



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPL, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Landlord's Two-Month Notice to End Tenancy under section 49(3) of the Act, served on the Tenant on January 6, 2023.

### Issue to be Decided

Is the Landlord entitled to end the tenancy under section 49(3) of the Act?

### Background and Evidence

The parties, who are siblings, had an oral agreement commencing approximately December 2018 for the Tenant to rent the basement suite. The Landlord lives on the upper floor of the home. The monthly rent is \$600, payable on the first day of each month. The Landlord did not request a security deposit from the Tenant.

The Landlord testified at the hearing that the personal relationship with the Tenant had disintegrated to the point where he requested the Tenant move out. The Tenant refused and the Landlord then issued a two-month Notice to End Tenancy for the reason that he and his wife would occupy the rental unit. The Notice was dated January 6, 2023 and requested the Tenant vacate the rental unit by March 6, 2023. A copy of the Notice was submitted in evidence and complies with the Act. The Landlord testified that he wanted the "full house again" and would use the rental unit for extra space.

The Tenant objected stating that the Landlord was not a landlord because he did not own the home. The Landlord stated he did not own the home and was renting.

### Analysis

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member intends, in good faith, to occupy the rental unit. Section 49(2) defines “landlord” for purposes of this section as an individual who, at the time of giving notice, has no less than a 50 percent reversionary interest in the property for a period of more than 3 years. A reversionary interest is one where the property returns to the interest holder at the end of the tenancy.

The Tenant took the position that the Landlord was not a “landlord” under the Act in order to end the tenancy for the purpose of residential occupancy. Upon any end to the tenancy, the Landlord would regain possession of the rental unit, notwithstanding that the Landlord is himself a tenant. The Landlord testified that he had lived in the home for approximately 28 years and had an annual renewable lease with his landlord. As a result, the Landlord may be in the home for an indefinite period that exceeds the required period of more than 3 years.

The second part of section 49(3) refers to landlord ending the tenancy when, in good faith, the landlord intends to occupy the rental unit. Policy Guideline 2A defines good faith as: “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.”

The Landlord testified that he wanted the rental unit for purposes of extra space. Section 49(3) only applies if the rental unit will be occupied for residential use, not to hold and keep for use (that is, vacant possession). Policy Guideline 2A provides an example that is relevant to this application: if a landlord rents out a basement suite (the landlord occupies the upper level), the landlord may reclaim the basement suite as part of their living accommodations.” The Landlord testified that he had raised his family in the home, and the rental unit had been created for purposes of providing living accommodation for his mother so he could provide support and care for her. The Landlord now seeks to re-incorporate that rental unit space back into his residential home.

I find the Landlord intends, in good faith, to reclaim the rental unit for his personal, residential use.

### Conclusion

The Landlord's application is granted. An order of possession is granted to the Landlord effective July 31, 2023. I decline to award the Landlord recovery of the filing fee.

The Tenant remains obligated to pay rent while in the rental unit. The Act provides that the Landlord is to compensate the Tenant for one month's rent, which must be given on or before the move-out date. The Tenant may withhold rent for the last month of the tenancy. If the Tenant moves out before another month of rent is due, the Landlord must pay the Tenant \$600.00 as compensation for ending the tenancy.

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 20, 2023

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Residential Tenancy Branch