



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes:** Landlord: OPL FFL  
Tenant: CNL OLC FFT

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for landlord’s own use pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”), pursuant to section 49;
- 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.

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 by the attending parties. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant duly served with the Applications and evidence.

As the tenant confirmed receipt of the 2 Month Notice on January 20, 2023, I find that this document was duly served in accordance with section 88 of the *Act*.

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

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to an order for the landlord to comply with the *Act*?

Are the parties entitled to recover their respective filing fees?

### **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 the applications and my findings around it are set out below.

This month-to-month tenancy began on December 1, 2021, with monthly rent is set at \$3,978.00. The landlords hold a security deposit of \$1,950.00.

The landlords served the tenant with a 2 Month Notice to End Tenancy for Landlord's use on January 20, 2023 providing the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse

The landlords provided the following reason for why they had decided to issue the 2 Month Notice. The named landlords are JB and RB who are the owners of the home, along with their brother RB. Both parties provided a sworn affidavit in evidence explaining why they wish to end the tenancy. Both JB and RB are adults who are currently living with their parents and wish to move out for more space and privacy. RB is a nurse, and states that they require proper rest when they come home from work, and with 5 people living at their parents' house, it can get quite noisy. RB states that they plan to live in the home with their sister JB, who had just graduated from their program in December 2022.

JB also submitted a sworn affidavit stating that they intend to reside at the residence. JB states that they had moved away to complete their master's degree, which was just completed in December 2022. JB states that having lived away from their parents, they

require their own space after having already moved away for an extended period of time.

The tenant VM is the named tenant on the tenancy agreement, and currently resides in the home with BB, a man with developmental disabilities. The tenant provided the background in their evidentiary package explaining how they had replied to an online advertisement for the home, which was advertised for \$3,500.00 per month. The tenant met with RB, who is the mother of the landlords. VM was looking for a home with separate suites as they wanted to move into the home with BB and a roommate who would assist with BB. The parties agreed to enter a tenancy agreement to rent the entire home for \$3,900.00 per month. VM informed BB that there may be more individuals moving in in the future, which may include the tenant's son. VM, BB, and the roommate moved in on December 1, 2021. The roommate moved out on November 15, 2022 after the tenant informed RB in September 2022.

The tenant states that RB casually informed her that they wanted to take possession of the lower suite since the roommate had moved out. VM informed RB that they were considering moving BB to the lower suite, and that their 9 year old niece was staying there temporarily due to a fire at her townhouse. VM states that this issue was brought up again in a future conversation.

In November 2022, VM had sent a text message to RB about discussing the possibility of allowing another individual to reside in the home. A phone conversation took place on November 24, 2022, during which RB expressed concerns about BB being in the home alone since the roommate had moved out, which would "increase the risk" for the landlords' home insurance, and how a second person with "special needs" would increase the risk further. The phone conversation was witnessed by BD, a real estate agent who was present with VM during the phone call.

VM states that on November 29, 2022, RB called to follow up on the prior conversation, and the tenant was presented with four choices. On December 4, 2022, the tenant responded by text message.

On request of RB, VM and RB meet up on December 8, 2022. The tenant attempted to bring a friend, DB. DB states that they went back to the car as RB did not want her present. VM attended the meeting alone, and recorded the conversation, which was submitted in evidence.

On December 14, 2022, RB requested a letter ASAP that BB can stay home alone without supervision for insurance and liability purposes. On January 8, 2023, the tenant was informed that the insurance company on the phone that the landlord was declined the home insurance because the tenant was running a business from the home, and the neighbourhood was not zoned for commercial business. The tenant states that on January 18, 2023, RB informed the tenant that no other individuals were to move in, with the exception of the tenant's son. The tenant states that on January 19, 2023, RB informed them that they were ending the tenancy as the landlord was declined the insurance. The tenant was served with the 2 Month Notice 2 days later, and informed it was for RB's daughters, the owners of the home, to move in.

The tenant is requesting cancellation of the 2 Month Notice as they believe that the landlords' main reason for ending the tenancy is due to the dispute over BB and possible additional occupants, and the impact on the landlords' costs and insurance.

The tenant also filed an application for the landlords to comply with the Act as the landlords have denied the tenant to have additional roommates other than potentially their son.

### **Analysis**

Subsection 49(3) of the *Act* sets out that a landlord 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.

*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."*

Although the landlords stated that they had issued the 2 Month Notice for landlord's use, I find that the tenant had raised doubt as to the true intent of the landlords in issuing this notice. The burden, therefore, shifts to the landlords to establish that they do not have any other purpose to ending this tenancy.

I find that the tenant raised considerable doubt as to why the landlords require the tenant's specific rental unit for their own use. Although the landlords did provide an explanation for why they want to move into the home, I find that the tenant had provided detailed evidence which shows that there was a significant concern from the landlords' mother, RB, about whether the tenant could allow additional occupants or roommates to reside in the home. I find that although the landlords are named in this dispute and on the tenancy agreement, the tenant interacted with RB for the majority of tenancy related matters. I find that the evidence clearly shows that RB did not approve of the tenant's plans to have additional roommates or occupants move into the home. Furthermore there was no mention of the fact that the landlords wanting to move into the home prior to the service of the 2 Month Notice, which took place just a couple days after the tenant was informed that no one else could move in, with the exception of possibly the tenant's son.

I find that the landlords have not met their burden of proof to show that they do not have any other purpose in ending this tenancy. I find that the tenant had raised considerable doubt as to the landlord's true intentions in ending this tenancy, especially considering the fact that prior to the issuance of the 2 Month Notice, the two parties were involved in a dispute over whether the tenant should be allowed to have additional roommates or occupants in the home.

For all these reasons listed, I allow the tenant's application to cancel the 2 Month Notice dated January 20, 2023. This tenancy is to continue until ended in accordance with the *Act*, regulation, and tenancy agreement. I dismiss the landlords' entire application without leave to reapply.

The tenant requested an order to allow additional parties to move into the home. I note that the tenancy agreement only names VM as the sole tenant in this tenancy. Even though BB is not named, I find that the landlords had clearly allowed BB to reside in the home, as well as the roommate who had moved out.

I am not satisfied that the landlords had provided the tenant permission to allow any additional parties to reside in the home, or for the former roommate to be replaced with a new one. Accordingly, I find that the only two tenants or occupants who have permission to occupy the home under the tenancy agreement are VM and BB. Any

changes to the tenancy agreement must be agreed to by both parties. I dismiss this portion of the tenant's application without leave to reapply.

As the tenant's application had merit, I allow the tenant to recover the filing fee.

**Conclusion**

The landlords' application is dismissed without leave to reapply.

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The Landlord's 2 Month Notice, dated January 20, 2023 is cancelled and of no force or effect. This tenancy is to continue until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for the 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 landlords must be served with **this Order** as soon as possible. Should the landlords 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.

I dismiss the remainder of the tenant's application without leave to reapply.

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 28, 2023

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Residential Tenancy Branch