



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

- cancellation of the landlord’s Two Month Notice to End Tenancy Issued for Landlord’s Use of Property (the Two Month Notice) pursuant to section 49; and,
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

TM, the tenant and TD, the landlord’s agent appeared at the hearing.

As both parties were in attendance, I confirmed that there were no issues with service of the Notice of Dispute Resolution Proceeding package and evidence. In accordance with sections 88 and 89 of the Act, I find that the landlord was served with the tenant’s application materials and evidence.

The tenant testified that while they received the landlord’s evidence, the version provided to them was redacted to remove the names, suite numbers, and all identifying information. The landlord’s evidence which has been uploaded to the Residential Tenancy Branch website for my consideration is unredacted. When questioned, the landlord’s agent indicated that they did not intend to provide the tenant with a redacted version of their evidence. However, they were unable to confirm that an unredacted version of the evidence had been provided to the tenant.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) requires the respondent to ensure that evidence the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential

Tenancy Branch. In this case, while I acknowledge the respondent landlord, served the tenant with an evidence package, because it was redacted, I do not accept that the tenant was served with the evidence the landlord intended to rely on at the hearing in accordance with the Rules of Procedure. As a result, I find that the tenant was not sufficiently served with the landlord's evidence and therefore, I will not be considering the landlord's evidence for the purpose of rendering a decision in this matter.

The parties were cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the outset of the hearing, the landlord's agent confirmed that the landlord listed on the tenant's application is in fact the property manager. The landlord's agent provided the landlord's name. Pursuant to section 64(3)(a) of the Act, I have amended the name of the landlord on the **tenant's** application.

### Issue(s) to be Decided

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

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

The parties confirmed the following details of the tenancy. The tenancy began by way of a written tenancy agreement on May 1, 2015, with the previous owner of the multi-unit building. The landlord purchased the building in December 2021. Monthly rent is \$1,278.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$547.50, which the landlord continues to hold in trust for the tenant.

The landlord's agent testified that the Two-Month Notice was served on the tenant by attaching a copy to the door of the rental unit on February 3, 2023. The tenant confirmed receipt of the Two-Month Notice on February 3, 2023.

The Two-Month Notice is submitted into evidence and indicates that it was issued because the rental unit will be occupied by the child of the landlord or the landlord's spouse.

The landlord's agent testified that the Two-Month Notice was issued in good faith. Two Two-Month Notices were issued to three units including the tenant's unit because they are in close proximity to one another and the landlord intended to use them for themselves and their adult children. The two tenants from the other units mutually agreed to end their tenancies recently and the landlord and their children are occupying those units. The landlord's other child will occupy the tenant's unit when the tenant vacates.

The landlord's agent testified that the landlord owns three buildings in the city and the landlord, and their children are renovating the inside and outside of the buildings. The landlord's child who intends to move into the tenant's unit is moving to the city and plans to act as the building manager for the three buildings while living in the rental unit. The landlord's agent testified that there are tenancy agreements submitted into evidence showing that the landlord's family members are tenants in the building.

The landlord's agent further testified that the hydro and internet is in the landlord's name and the landlord's child's name for the two units that were vacated most recently.

The landlord's agent testified that if the landlord was acting in bad faith, they would have evicted the tenants in the building who pay the lowest rent. However, they did not.

The tenant wrote in their application the following:

Since Brown Bros was hired by the new owner in December 8<sup>th</sup>, 2021, the tenants of my 25 suite building & I have been offered thousands of dollars to Mutually end Tenancy. 24 hours after the last cash offer expired, 3 tenants are served 2 month eviction notices. Based on the extensive suite renovations on several units, I believe the notices were not delivered in good faith.

[Reproduced as written]

During the hearing, the tenant argued that the Two-Month Notice was not issued in good faith. The tenant testified that the landlord presented them with three separate offers to mutually end their tenancy in exchange for lump sum payments. The tenant

submitted the offers into evidence. The tenant testified that the offers which were presented to them prior to an after the Two-Month Notice was issued left them feeling bullied to agree to end their tenancy. The tenant argued that if the landlord intended to use their rental unit for the purpose stated on the Two-Month Notice, they would not have offered to pay the tenant in exchange for mutually agreeing to end the tenancy.

The tenant testified while the landlord indicates they require their rental unit for a child or spouse of the landlord, they do not believe that another unit is required. The tenant testified, eight units in the 25-unit building have been vacated and renovated. The tenant questioned why these renovated units are not substantial enough to accommodate the family members of the landlord.

The tenant testified that the landlord staged their children's move in and that any utility bills only show that renovations are taking place in the units that have been vacated.

### Analysis

Section 49 (3) of the Act states 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.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure provides that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Upon review of the Two Month Notice to End Tenancy dated February 1, 2023, I find that the Notice was completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenants in a manner that complies with section 88 of the Act.

However, I find neither the landlord nor their agent submitted sufficient evidence to support the reason listed on the Notice.

Neither the landlord, nor their child was present at the hearing to provide direct testimony, nor did they provide an affidavit or statutory declaration to support their intent to occupy the rental unit.

Furthermore, as was previously discussed, the landlord's documentary evidence was not sufficiently served to the tenant and as a result, has not been considered for the purpose of rendering a decision in this matter.

Ultimately, I find the hearsay testimony of the agent is insufficient to support the Two Month Notice. I find direct evidence from the landlord and/or their children would be required to establish that a close family member of the landlord intends in good faith to occupy the rental unit. As no direct evidence has been presented, I find the landlord has not met their burden of proof on a balance of probabilities.

While the tenant raised the good faith intent in their application, I find it is not necessary to consider the good faith of the landlord as there was insufficient evidence that the landlord's child truly intended to move into the rental unit and occupy the rental unit for at least six months in accordance with the Act.

For the above reasons, I find that the landlord provided insufficient evidence to meet the onus which is upon them to prove the reason listed on the Notice. I therefore grant the tenants' application.

As a result, I ORDER that the Two-Month Notice dated February 1, 2023, with an effective move-out date of April 30, 2023, is cancelled, and it is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

As the tenant was successful in their application, I find that the tenant is entitled to recover the filing fee paid for this application from the landlord. In accordance with the off-setting provisions of section 72 of the Act, I grant the tenant a one-time rent reduction and order that the tenant may withhold \$100 from ONE future payment of rent. The tenants should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

### Conclusion

The tenant's application is granted. The Two-Month Notice is cancelled and is of no force or effect.

The tenant is granted a one-time rent reduction for the filing fee and may withhold \$100.00 from ONE future rent payment.

The tenancy will continue until 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: June 14, 2023

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Residential Tenancy Branch