



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, OLC, FF

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/ 2 Month Notice) issued by the landlord, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and recovery of the cost of the filing fee.

The tenant, the landlords, and the landlords' witness attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed. The witness was excused until their testimony was required.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlord confirmed receipt of the tenant's application and evidence and the tenant confirmed receiving the landlords' evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

As to the tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, from reading the description in their application, the tenant re-states that they believe the landlord was not acting in good faith. I find it was not necessary to consider this request of the tenant, as it relates to their request to cancel the 2 Month Notice.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled or upheld?

Is the tenant entitled to recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on or about July 1, 2021, and monthly rent is \$1,700. Filed in evidence was the written tenancy agreement.

The evidence shows that the landlord issued the tenant a 2 Month Notice by attaching it to the tenant's door on March 29, 2023. The Notice was dated March 29, 2023, and had an effective move-out date of May 31, 2023.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the child of the landlord or landlord's spouse.

In their application, the tenant wrote the following:

*We are disputing the notice because we believe our landlord is not being honest in the reason he wants to have us move out. I was not under the impression we were late but I do have chronic back pain (2yrs WCB) and its been very bad the last few days(if required I can ask my work to write a letter about my back issue over the last few days). Also our son has autism and we are in the middle of his assessment(can provide record). My wife and I work full time through all this hence the delay.*

[Reproduced as written]

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

The landlord testified to the following:

- They issued the tenant an earlier 2 Month Notice on June 27, 2022, but they did nothing about that Notice.
- They tried to keep the tenant while selling the property earlier, but the tenant was not cooperative with the realtor.
- The realtor would not take the listing because of the tenant, and they could not find another realtor to take the listing.
- During last summer, the realtor said they could not sell the property due to the rental unit having a tenant.
- The tenant was offered another unit in the same building.
- The tenant would not cooperate with the plumber.
- After the June 2022 Notice, the real estate market crashed, prices came down and interest rates went up, and for this reason, they decided not to sell the rental unit.
- Their son returned to the area last year after completing professional training, and took out a year's lease in an apartment.
- Their son gave notice to end their tenancy at that apartment on March 2, 2023, effective June 2023.
- Their son intends on living in the rental unit, and they have some small renovations planned prior to him moving in.
- They do not have time for major renovations at this time.

The landlord's son testified to the following:

- The landlord has other rental units.
- The rental unit has problems and they have heard the landlord complain about these tenants.
- There are no problems with the tenants in the other rental unit.

The tenant testified to the following:

- The landlord is not acting in good faith, as they told the landlord when moving in, they wanted a long term tenancy, with the landlord saying that was no problem.

- When they moved in, they made comments about some outdated items, the landlord said that would be no problem to fix them.
- The tenant offered to take on the plumbing costs.
- One time, unannounced, the landlord came into the rental unit with 2 strangers, took photos, and left. The landlord said nothing about the work.
- The tenant was informed that the landlord wanted to test the market and then a few months later, the landlord informed the tenant they were selling the property.
- The tenant talked to the realtor and denied saying he would not cooperate with the sale of the home.
- The tenant then asked the landlord what was going on, the landlord said they were too messy.
- The landlord has tried to evict them twice and then changed their mind, as they did not want the tenants to move.
- In December 2022, the landlord called, and they had an emotional conversation of one and a half hours, about the landlord's marital problems. During this call, the landlord questioned the tenant's manhood.
- Following that, the landlord wanted to come over with a stranger and tried to record him, explaining why he, the landlord, did not want them to move.
- They heard nothing from the landlord until March 2023, when the landlord served the 2 Month Notice.
- During this entire time, the landlord kept complaining about costs and prices, and did not mention their son once. During the tenancy, the landlord kept talking about renos.

### Analysis

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, which means there is a 2-part test the landlord must meet in order to be successful with their 2 Month Notice.

Tenancy Policy Guideline 2A (PG 2A) states that a landlord may end the tenancy if they or their close family member, landlord and spouse in this case, *"intend in good faith to use the rental unit as a living accommodation or as part of their living space"*.

PG 2A further provides that 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 motive for ending the tenancy**, and they are not trying to avoid their obligations under the Act.

The landlord has the burden to prove that there was an honest intention and an absence of bad faith.

In considering the totality of the evidence, I find on a balance of probabilities that the landlord had an ulterior motive in seeking to end the tenancy.

The landlord's son testified that their parents had problems with these tenants and they had no problems with their tenants in another rental property. Additionally, the landlord has tried to sell the property in the past year, but they complained that the tenants were not cooperative.

Additionally, I find the tenant's testimony was consistent and compelling that the landlords wanted the rental unit empty so that the landlord could make renovations to the rental unit.

These statements lead me to conclude the landlord did not issue the 2 Month Notice in good faith and had an ulterior motive when doing so, which was to evict the tenants because the costs of renting and ownership were becoming too expensive.

I find another reason for the landlord seeking an end to the tenancy was due to personal issues with the tenant, which I find is supported by the landlords' son's testimony.

Given the above, I find that the 2 Month Notice was not issued in good faith, but rather I find the landlord had an ulterior motive.

As the landlord did not meet the good faith part of the two-part test, I find it was not necessary to consider whether the landlord's son truly intended on living in the rental unit for residential purposes for 6 months following the effective date.

Therefore, I grant the tenant's application and I **ORDER** the 2 Month Notice of March 29, 2023, for an effective move-out date of May 31, 2023 is **cancelled** and is of no force or effect.

I **ORDER** the tenancy to continue until it may legally end under the Act.

As the tenant's application was successful, I grant the tenant recovery of the \$100 filing fee. **I authorize** the tenant a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The tenants' application has been granted as I have ordered the 2 Month Notice cancelled and it is of no force or effect.

The tenancy will continue until ended in accordance with the Act.

The tenant is granted a 1-time rent reduction of \$100 to recover the cost of the filing fee.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 3, 2023

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Residential Tenancy Branch