



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

Page: 1

## **DECISION**

Dispute Codes      CNL FFT

### Introduction

The tenants seek to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") under section 49 of the *Residential Tenancy Act* (the "Act").

The tenants seek to recover the cost of the application fee under section 72 of the Act.

### Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. Are the tenants entitled to recover the cost of the application fee?

### Background and Evidence

The tenancy began October 1, 2020, and monthly rent is \$1,500. The tenants did not pay a security or pet damage deposit and there is no written tenancy agreement.

The Notice was previously and initially served on June 4, 2023, but then a revised Notice (with the omission of the landlords' son's name) was served on June 16, 2023. The Notice indicated that the landlord and their spouse intend to occupy the rental unit. A copy of the Notice was in evidence and the landlords confirmed that all four pages of the Notice had been served.

The landlords testified under oath that they would like to downsize, they are in their 70s, would like to retire, and want to live in the rental unit, which is a three-bedroom house.

The tenants testified about some rather unpleasant dealings at work (the tenant S.B. works for the landlords' winery) that they argued led to the landlords issuing the Notice. For the reasons set out below, I will not reproduce the details regarding the unpleasanties. In summary, the tenants argued that the Notice was given in "anger and malice just to prove a point."

In rebuttal, the landlords argued that the whole situation to which the tenants spoke was work related and had nothing to do with the issuing of the Notice. Further, in response to the tenants' questioning whether the landlords can handle all the stairs in the rental unit, the landlords testified that "we [currently] live in a house with stairs" and that stairs are not an issue. They simply want to downsize and retire, and the rental unit is "perfect for us."

In rebuttal, the tenants stated that they are not actually disputing the Notice, but rather the method in how it was served. The tenants do not dispute that the landlords will move into and occupy the rental unit.

### Analysis

The notice to end tenancy was given under section 49(3) of the Act which 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."

The second box ticked on the Notice, regarding a family corporation, does not apply and as such I will not consider this ground further.

The tenants took issue with the *manner* in which the landlords issued the Notice. However, they were clear in that they did not dispute the *purpose* for the Notice: that is, that the landlords intend in good faith to occupy the rental unit. Given the tenants' position on this point, I am unable to reach any other conclusion than to find that landlords have every good faith intention to occupy the rental unit.

And, while the situation at the winery was unfortunate, it does not, I find, have any impact on the landlords' intentions to occupy the rental unit and does not raise any questions in my mind that the landlords have a good faith intention to occupy the property.

For these reasons, taking into consideration all the evidence before me, it is my finding that the landlords have proven on a balance of probabilities the reason for giving the Notice. Accordingly, the tenants' application to cancel the Notice is dismissed and the Notice is upheld. The tenants' application to recover the cost of the application fee is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, having found that the Notice complies with section 52 of the Act, and having dismissed the tenants' application and upholding the Notice, the landlords are granted an order of possession of the rental unit.

A copy of the order of possession is issued with this Decision to the landlords, and the landlords must serve a copy of the order of possession on the tenants. The tenancy is ordered ended effective September 4, 2023 (the effective end of tenancy date as indicated on the Notice). The order of possession will reflect the end of tenancy date.

Last, the parties are reminded of [section 51\(1\)](#) of the Act in respect of the tenants' rights and the landlords' obligations concerning the last month of rent.

Conclusion

**The application is dismissed, without leave to reapply.**

**The tenancy is ordered ended effective September 4, 2023, and the landlords are granted an order of possession.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: July 25, 2023

---

Residential Tenancy Branch