



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **CNL, OLC, FFT; OPL, FFL**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the Act) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the Act) for the following:

- An order of possession under a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") pursuant to sections 49 and 55;
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

The parties attended. They are referenced in the singular.

Each party acknowledged receipt of the other party's documents. I find service complied with the Act.

## Background

The parties submitted substantial evidence, conflicting information and testimony. The parties disagreed on many issues.

In this Decision, I will not summarize or address all documentary evidence and testimony. I will only address admissible, relevant, essential evidence which underpins my findings relating to the issues.

## *Application*

This is an application by the tenant to cancel a Two Month Notice issued by the landlord. The tenant asserted the Notice is not issued in good faith and is issued in response to the tenant's refusal to pay an unlawful rent increase. The landlord denied the claim and requested an Order of Possession.

## *Burden of Proof*

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice.

*Residential Tenancy Branch Rules of Procedure - Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy, the landlord must present their evidence first.

Consequently, even though the tenant applied for dispute resolution and is an Applicant, the landlord presented their evidence first.

## *Tenancy*

The parties agreed to the background of the tenancy. The tenancy began on March 1, 2021. Monthly rent payable on the first is \$2,700.00. At the beginning of the tenancy, the tenant paid of security deposit of \$1,350.00 which the landlord holds.

The tenant's rental unit is one of two apartments in a building. The tenant's is a 5-bedroom, 2-level unit.

The second unit in the building is an occupied 2-bedroom apartment.

Each unit is within a step or two of ground level although the landlord claimed the rise to the tenant's unit was lower.

### *Two Month Notice*

The parties agreed the landlord issued a Two Month Notice dated July 21, 2023, requiring the tenant to move out by September 30, 2023. The reason for the Notice is that the landlord's parents are moving in.

The tenant acknowledged service. A copy of the Notice was submitted which is in the standard RTB form.

The tenant applied to cancel the Notice within the permitted time.

### *Landlord's Testimony*

The landlord stated his parents live with him in the lower level of their house. The parents have health issues and have trouble using the stairs to the main living area.

The tenant's unit has a ground level entry and is more suitable for their needs. The landlord wants the tenant to move out so his parents can move in.

### *Tenant's Testimony*

The tenant's stated that the landlord did not issue the Two Month Notice in good faith. They gave four reasons.

Firstly, in April 2023, the landlord wanted to raise the rent to \$4,500.00 from \$2,700.00. The tenant offered an increase but were unable to pay the full amount requested. The tenant read aloud texts between the parties and recounted details of the communication.

The Two Month Notice was issued July 21, 2023, shortly after the tenant did not agree to the rent increase. The tenant believes the Two Month Notice was issued so the landlord could get them out and raise the rent.

Secondly, the tenant's unit is located on two floors joined by steps making the unit unsuitable for occupation by elderly people who have trouble with stairs.

Thirdly, the tenant has been without a dishwasher or a properly working fridge for a year. They have requested repairs which have not taken place. The landlord wants to get rid of them as troublesome tenants.

Finally, the building contains another more suitable 2-bedroom unit. There is no need for the tenant to move out of a 5-bedroom unit.

#### *Landlord's Reply*

The landlord denied the tenant's allegations.

The landlord said they never asked for more rent.

The landlord's parents would only be occupying the first floor of the tenant's unit, so they would not be using the stairs to the bedrooms.

The rise to the other apartment in the building is greater than the entry to the tenant's unit, so the other apartment in the building is not suitable for their parents.

The landlord said he did not know the two appliances needed repairs. The landlord agreed to carry out repairs in one month.

#### *Summary*

The tenant requested the Notice be cancelled as the landlord did not issue it in "good faith".

The landlord requested an Order of Possession.

## Analysis

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

### *The Act and Guidelines*

To evict a tenant for landlord's use of the property, the landlord has the burden of proving the reasons on the Notice. The parties had contrasting narratives which were provided in detail in the hearing.

The tenant raised the issue of the intention of the landlord in issuing the Notice. The tenant questioned whether the landlord's plan to have their parents move in was genuine. The tenant expressed a lack of confidence in the landlord's stated plan. The tenant argued the landlord issued the notice in retaliation for the tenant's refusal to pay more rent. The Notice is part of a plan to force the tenant to move out so they can get more rent. The landlord could rent the unit for substantially more rent than paid by the tenant.

The tenant asserted that the landlord has not issued the Two Month Notice in good faith but instead simply wants to get rid of the tenant, once a valued tenant, and now estranged. The motive, the tenant asserted, is retaliation.

As well, the landlord could have chosen the other apartment in the building and there is no good, acceptable explanation why he chose the tenant's unit for his parents to move into.

*The Residential Tenancy Branch Policy Guideline # 2* states *good faith* is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Two Month Notice.

This Guideline says that the landlord must show they have no other motive. Otherwise, the question is whether the landlord had a dishonest purpose.

The Guideline directs me to consider motive in deciding whether to uphold the Notice. When the landlord's good faith is called into question, the landlord must show they truly intend to do what they said on the Notice. The landlord must also establish that they do not have another purpose that negates the honesty of intent. They must not have an ulterior motive for ending the tenancy.

### *Credibility*

The tenant's testimony was straightforward and matter of fact. They were credible in their evidence that there was an unresolved dispute with the landlord about a rental increase. The landlord's denial does not ring true. I conclude the landlord's evidence is not reliable or credible.

I find the tenant's version of events is the most likely to be true. I therefore give the tenant's evidence the most weight. Where the parties evidence differs, I prefer the tenant's evidence.

### *Findings*

The tenant has raised the good faith intention of the landlord which I find has some basis.

While the landlord denied they hold any resentment or ulterior motive, I accept the tenant's testimony that the parties argued over a rent increase.

I accept the tenant's testimony that the landlord requested a rent increase in April 2023 and they said they could not pay the amount requested. The tenant's compromise offers were ignored.

Shortly afterwards (July 2023), the landlord issued a Two Month Notice.

I have carefully considered the evidence. I find that there was a conflict between the parties with its origins in the refusal to pay rent.

I find that the timing of the Two Month Notice during the intensity of these ongoing, unresolved disputes, raises doubts about the bona fide intentions of the landlord. I find there are reasonable doubts about the intention of the landlord's parents to occupy the unit.

While the landlord provided some explanation about the reason for issuing the Notice, I find that I am not wholly convinced that there are no other factors which have given rise to the Notice.

In any event, while the landlord may indeed intend to use the rental unit for the purposes stated on the Notice, I find there may be additional reasons fueling the issuance of the Notice. I find the landlord has not met the burden of proof that they do not have an ulterior motive in issuing the Notice. Therefore, I find that the argument has merit that there is lack of good faith in the issuance of the Notice.

I find the landlord has not met the burden of proof that they intend to do what they said in the Notice.

Consequently, I cancel the Two Month Notice. This tenancy will continue until it is ended in accordance with the agreement and the *Act*.

As the tenant have been successful in this application, the tenant is entitled to be reimbursed for the filing fee. Pursuant to section 72, the tenant is authorized to deduct this amount from rent payable in the amount of \$100.00 for one month only.

### *Summary*

I grant the tenant's application. As agreed by the parties, the landlord is ordered to repair the dishwasher and refrigerator within one month of today's date.

The tenant may deduct the filing fee of \$100.00 from rent on a one time basis.

The landlord's application is dismissed without leave to reapply.

Conclusion

The tenant's application to cancel the Two Month Notice is allowed. The Two Month Notice has no continuing force or effect. This tenancy will continue until ended according to the *Act*.

The landlord's application is dismissed without leave to reapply.

The landlord will repair the dishwasher and the fridge within by October 9, 2023.

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: September 08, 2023

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Residential Tenancy Branch