



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, PSF, RP, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

The Rules of Procedure specify that multiple applications contained in a single application must be related. In this case, I found that the primary application relates to a notice to end the tenancy for the landlord's use of the property, and the hearing focused on that portion of the tenants' application.

### Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in accordance with the *Residential Tenancy Act* and in good faith?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on July 1, 2013 and reverted to a month-to-month tenancy after February 1, 2014 and the tenants still reside in the rental unit. Rent in the amount of \$1,100.00 was payable on the 1<sup>st</sup> day of each month, which has been increased over time and is now \$1,174.00 per month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite and the upper suite is occupied by other tenants. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on November 27, 2021 the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated November 27, 2021 and contains an effective date of vacancy of January 31, 2022. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse.

The landlord also sent a long message to the tenants explaining that the landlord's spouse works at home, and child care for their young child takes place at the landlord's residence. Due to the layout of the landlord's home the landlord doesn't have anywhere to sleep during the day when on night shift. The landlord needs the rental unit for shift work for 4 days per week, but the landlord's family won't be relocating. The landlord contacted the Residential Tenancy Branch and learned that the landlord doesn't have to occupy the rental unit 7 days per week but may only occupy it for the landlord's use; no Air BNB or other rentals.

The landlord is a police officer and found out on October 28, 2021 that his assignment has changed to another detachment working 12 hour shifts subject to extensions. The landlord looked at temporary storage structures, but found none were suitable for sleeping. The landlord also tried to see about renting a hotel but check-in and check-out times don't work for the landlord's shift work. The rental unit is closer to the landlord's detachment, and the landlord needs to occupy the rental unit for the landlord's safety in travelling and for the landlord's family needs.

**The first tenant** (KM) testified that there's more to the story than just cancelling the Notice, such as an ongoing mold issue for several years and the tenant brought up the situation to

the landlord on November 23, 2021 and put his foot down. The tenant alluded to the landlord that he just didn't want to do the repairs. The landlord replied that he wanted to view the rental unit on November 25<sup>th</sup> but didn't answer the tenant's concerns. The landlord arrived the next day to take photographs and again the following day for a haircut, and still didn't deal with the tenant's concerns. The tenant has a barber business and given that the landlord is a paying customer, the tenant didn't want to make things uncomfortable so didn't raise it again. The tenants were served with the Notice the next day, 4 days after the tenant sent the message to the landlord.

The tenants have been in the rental unit for 8 years and there have been lots of conversations and text messages about mold. The landlord provided an over-the-counter spray, but that's all he did. The cold room in the rental home takes on water and it's a huge issue. The tenants also got professional help and purchased a dehumidifier.

The tenant believes that in order to protect himself from incurring such costs, the landlord will use the rental unit and re-rent in 6 months. Then he could re-rent for double. Occupy to means move in, not use it only for shift work.

**The second tenant** (CP) testified that the landlord resided in the upper level of the rental home at one time, and mold has been an issue for a lot longer than since 2018. The law requires a landlord to maintain a rental unit, which has not been the case. It is difficult for the tenants to not see the Notice as acting in good faith. Also, if there are comparable units, that must be considered and may suggest that the landlord is not acting in good faith.

Both the upper and lower level units have 2 bedrooms and 1 bathroom. The upper level of the home was vacant, but the tenant is not sure for how long, however on December 1, 2021 the landlord said that that tenancy had fallen through; the landlord knew on November 26, 2021 that the upper unit would be vacant.

The tenant further testified that the tenants have tried hard to be polite, accommodating and to do repairs, but when the tenant's husband put his foot down, the landlord served the Notice 4 days later.

The average rental suite in the area is over \$1,500.00 per month, and according to searches conducted by the tenants, a 2 bedroom unit would rent for \$1,700.00 to \$2,400.00 per month. The tenant also believes that the upper level of the home currently rents for \$2,650.00 per month, plus utilities.

## Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, and in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), the landlord must establish good faith intent to use the rental unit for the purpose contained in the Notice.

In this case, I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*.

The tenants' position is that the landlord is not acting in good faith which is demonstrated by:

- the landlord's failure to maintain the rental unit while occupied by the tenants;
- the landlord issuing the Notice 4 days after the tenant put his foot down about repairs required; and
- by not using the upper level of the rental home when that suite became vacant.

The tenants referred to Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, which states, in part:

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

Both of the above examples have been raised by the tenants. The tenants have also raised the issue of the landlord's intent to use the rental unit for 6 months a few days per week, and then re-rent at a higher amount, but there is nothing in law to prevent a landlord from doing that. What I must consider is whether or not the landlord has good faith intent to occupy the rental unit for at least 6 months beyond the effective date of the Notice and commencing within a reasonable time after the effective date of the

Notice. However, the law does not permit a landlord to leave it vacant or unused or rent a portion of it.

The tenants also believe that in order to protect himself from incurring the cost of repairs, the landlord will use the rental unit and re-rent in 6 months for double the rent. The landlord disputes any neglect on the landlord's part. I fail to see how re-renting after 6 months would protect the landlord from incurring costs of repairs.

I have reviewed all of the evidence, and I accept the testimony of the tenants that the landlord knew of a change in his work location on October 28, 2021 but also knew on November 26, 2021 that the upper level would be vacant, and issued the Notice to end the tenancy on November 27, 2021. That in itself may give rise to a question of good faith intent. However, the rental unit that the landlord wishes to occupy rents for \$1,174.00 and the upper level rents for \$2,650.00. The landlord also testified that moving into the upper level is too expensive and the upper level is more than the landlord requires.

The landlord has also demonstrated that the new assignment to a detachment is about a 45 minute drive from the landlord's current home, and the rental unit is about a 3 to 5 minute drive, and I accept that.

The law also permits a landlord to end a tenancy for the landlord's use of the property as *part* of the landlord's living accommodation.

In the circumstances, I am satisfied that the landlord has good faith intent to use the rental unit for the landlord's use of the property, and the tenant's application to cancel the Notice is dismissed.

The *Residential Tenancy Act* specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on January 31, 2022.

Since the tenancy is ending, I dismiss the balance of the tenants' application.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on January 31, 2022.

This order is final and binding and may be enforced.

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: January 18, 2022

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Residential Tenancy Branch