



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on September 1, 2021.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. All parties confirmed they were not recording the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began approximately four (4) years earlier. Rent in the amount of \$1,000.00 was payable on the first of each month. The tenant paid a security deposit of \$300.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on November 11, 2021.

The reason stated in the Notice was that:

- 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). And specifies it will be a child of the landlord.

The landlord testified that their adult son and wife were evicted from their rental unit in July 2021 and moved in with them. However, they want them to move into the basement unit.

The tenant testified that there are two basement units, one main floor unit and an upper unit where the landlord lives. The tenant stated that the landlord's son lives in the main floor unit. The tenant testified that the landlord has only evicted them because they have been complaining about noise because the unit beside them has 3 children and the other has four children. The tenant stated that the landlord has also cut off their cablevision.

The landlord testified that their son is living in a separate three-bedroom unit that is next to their premises. The landlord stated they could be getting \$2,000.00 per month for that unit by renting to a large family. The landlord stated that their son does not need a three-bedroom unit and they could move into the tenant's two-bedroom unit. The landlord stated there is also privacy issues.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided insufficient evidence to show that:

- 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). And specifies it will be a child of the landlord.

The landlord's son is living within the rental premises in a separate three-bedroom unit, which the son moved into some time after they were evicted from a different premise in July 2021. The landlord wants to move their son from this larger unit to the tenant's two-bedroom basement unit as they could obtain a higher rent for the three-bedroom unit. So clearly money is a motivating factor for ending the tenancy.

Further, the landlord provided no supporting evidence that their son is willing and planning to move into the basement unit. The landlord's son and his wife may have rights under the Act as a tenant, which could include a license to occupy as they are living in their own self contained unit. Further, the landlord's son did not attend the hearing to provide any testimony, nor was there any written statement from the landlord's son for my consideration.

The only evidence the landlord provided in support of the Notice were copies of what appear to be invoices of the landlord's son and wife's phone bills and invoices for storage locker fees that were incurred after the Notice was issued. The landlord provided no testimony regarding this evidence. I do not see how the phone bills are relevant. Also, I do not see how the storage locker fee is relevant as this only supports the landlord's child would need a bigger unit, not smaller.

I find the landlord has failed to provide sufficient evidence and not met the burden of proof to prove the reason stated in the Notice. Therefore, I find it appropriate to grant the tenant's application to cancel the Notice. The tenancy will continue until legally ended under the Act.

### Conclusion

The tenant's' application to cancel the Notice is granted.

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 26, 2022

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Residential Tenancy Branch