



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL, FFT**

### 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 reimburse the tenant for the filing fee pursuant to section 72.

MG attended for both landlords ("the landlord"). The tenant attended. No issues of service were raised. The hearing process was explained, and the parties were granted an opportunity to ask questions which I answered. The parties has an opportunity to submit affirmed evidence and call witnesses.

The parties stated they were not recording the hearing.

The parties provided their email addresses to which the Decision shall be sent.

### *Preliminary Issue - 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 the Applicant, the landlord presented their evidence first.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the Two Month Notice?

Background and Evidence

The parties explained the unit is in a building owned by the landlord. The tenant lives on the main floor, a unit with 3 bedrooms. The building also contains an apartment on the lower floor which is smaller and has 2 bedrooms.

The landlord requested an Order of Possession as they intend that their adult daughter move into the tenant's unit. The tenant objected to the application and asserted the landlord did not have good faith in the issuance of the Notice.

The parties submitted a copy of the tenancy agreement. They agreed as follows about the background of the tenancy.

INFORMATION	DETAILS
Type of tenancy	Monthly
Date of beginning	December 15, 2015
Date of ending	Ongoing
Length of tenancy	7 years (December 2022)
Monthly rent payable on 1st	\$2,080.75
Security and pet deposit	\$950.00 + \$300.00
Date of Application	March 7, 2022

The parties agreed as follows with respect to the landlord's Notice:

INFORMATION	DETAILS
Type of Notice	Two Month Notice to End Tenancy for Landlord's Use
Date of Notice	February 27, 2022
Effective Date of Notice	May 1, 2022 (corrected to June 1, 2022)
Date and Method of Service	Mailbox on March 1, 2022
Effective Date of Service	March 3, 2022
Application for Dispute Resolution filed - date	March 7, 2022

The Notice stated the landlord's child intended to occupy the unit. The Notice was in the standard RTB form and a copy was submitted. The tenant applied to dispute the Notice within the time permitted.

#### *Landlord's Testimony*

The landlord testified as follows. Their 25-year-old daughter lives alone in an area close to the city in which the unit is located. The daughter works in the city and travels in her vehicle.

In January 2022, the daughter had a minor single car accident, and her car was towed. She was not injured. However, the stressful traffic congestion on her daily route and the accident have resulted in the wish of the daughter to move into the unit which is closer to her workplace. The daughter submitted a signed letter as evidence to this effect. The landlord is concerned about the daughter's safety. The landlord did not know the

distance between the daughter's home and the unit or the estimated saving time in travel.

The landlord acknowledged that the building contains another unit, the downstairs apartment, which is furnished, smaller and has two bedrooms. The apartment is rented monthly.

The unit is not suitable, however, because the daughter has her own furnishings and wants the larger unit which is more suitable for large social gatherings.

Accordingly, the landlord issued the One Month Notice which was served on March 1, 2022.

The landlord requested a date for possession of August 31, 2022.

### *Tenant's Testimony*

The tenant testified as follows. The parties had an increasingly acrimonious relationship throughout the tenancy over various issues. The tenant submitted copies of considerable correspondence during the years of the tenancy.

For example, the landlord previously issued a Two Month Notice in May 2017 and stated her parents would be moving into the unit. The Notice followed a dispute between the parties over payment of a sewer bill. The matter was resolved when the parties negotiated new terms of the tenancy and the Notice was withdrawn.

The tenant concluded from this previous experience that the landlord issued the current Notice for financial motives other than wanting their daughter to live in the unit. The tenant believed the market rent is close to double what they are paying.

The tenant provided another example of a situation which she believed is at the root of the issuance of the Notice. This issue involves service upon the tenant.

The tenant reported that tenancy notices were always served by registered mail. However, in September 2021, the landlord sent the tenant a Notice of Rent Increase by

email. The tenant has never agreed to service by email. Accordingly, the tenant did not pay the increase in rent.

The landlord properly served the documents on January 28, 2022, one month before issuing the Two Month Notice. Between September 2021 and January 2022, the parties exchanged emails with the landlord requesting the rental increase by paid, and the tenant paying only as per the agreement.

The tenant asserted that they want the landlord to comply with their obligations under the Act. The issuance of the Notice so soon after the recent dispute is not a coincidence. The landlord has decided to evict the tenant over the disputes or a desire to get more rent and not because their daughter will occupy the unit. As well, the landlord has a less expensive apartment with a monthly tenant that is available for her, and it makes more sense that the daughter would live there.

The tenant also stated that the unit is not a substantial saving in travel related time for the landlord's daughter as her present home is only 9 or 10 km from the unit.

In summary, the tenant asserted the Notice was not issued in good faith for two primary reasons.

Firstly, the unit could be rented at a much higher rate and the landlord stands to gain a substantial net benefit, even if compensation to the tenant is ordered.

Secondly, the tenant has required that the landlord comply with the Act. This has caused dispute over payment of bills and, most recently, service of formal notices. The Notice is issued in retaliation.

### *Landlord's Reply*

The landlord denied the tenant's version of events or description of their motive. They denied seeking revenge or retaliation as claimed by the tenant. They objected to the tenant's statements that they coerced the tenant in any way at any point in the tenancy.

The landlord explained the previous Two Month Notice was issued so that their parents could live in the unit, but the parents' plans changed. That Notice was not issued in

retaliation or to pressure the tenant. They were puzzled by the tenant's refusal to accept service by email since they believed this was a proper method. They eventually properly served the Notice and stated they were not angry.

The landlord asserted that the sole purpose for the issuance of the Notice was for their daughter to move into the unit. While not providing evidence of the distance, the landlord asserted there was a savings of time and increased safety if their daughter moved to the unit.

### *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 for their daughter to occupy the unit 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 accept service by email and exasperation with disputes over bills.

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 and fear of requests for the landlord to comply with their duties under the Act. The tenant also opined that the landlord could rent the unit for substantially more rent than paid by the tenant. As well, the landlord could have chosen the downstairs apartment.

*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 reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose.

When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy.

The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

### *Credibility*

In assessing the tenant's credibility, I found the tenant sincere and believable. The unit has been their home for many years, and they want to continue to live there. I find the tenant was properly motivated in asking that service of documents comply with the Act and that they not be required to pay bills outside the tenancy agreement. I found the tenant matter of fact and genuine.

I found the landlord's testimony to be less reliable. I found their denial of many of the tenant's statements to be unbelievable and not in keeping with my understanding of the facts based upon my review of the evidence. I find the tenant's version of events to be the more reliable.

Therefore, after considering the evidence and testimony of the landlord, where the parties' testimony differs, I give greater weight to the tenant's version of the facts.

### *Findings*

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

I find that the timing of the Two Month Notice so quickly after the disagreement about service of the Notice of Rent Increase, raises doubts about the bona fide intentions of the landlord.

While the landlord provided some explanation about the reason for issuing the Notice as supported by their daughter's letter, I find that I am not wholly convinced that there are no other factors which have given rise to the Notice.

I find there are reasonable doubts about the intention of the landlord to occupy the unit. I find the landlord has not met the burden of proof that they intend to do what they said in 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 good faith argument has merit.

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.

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*.

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: June 21, 2022

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Residential Tenancy Branch