



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Westwynd Realty  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      **CNL-MT, OLC, FFT**

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to be allowed more time to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property, (the "Notice") issued on February 23, 2022, to have the landlord comply with the Act and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at 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.

### Preliminary Matter

At the outset of the hearing the parties agreed that the tenants did dispute the Notice within the statutory time limit as it was received on March 18, 2022. Therefore, I find I do not need to consider whether the tenants should be allowed more time.

### Issues to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on December 15, 2018. Rent in the amount of \$2,200.00 was payable on the first of each month. The tenants paid a security deposit of \$1,100.00.

The parties agreed that the Notice was served on the tenants indicating that the reason for ending the tenancy 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); the Notice further indicates that the close family member that will occupy the unit is the child of the landlord or landlord's spouse.

The landlord testified that they want the rental unit for their daughter as she is a university student going into her fourth year. The landlord stated that their daughter goes to summer school and is involved in fund raising and the rental unit is close to their school.

The landlord testified that it was always the intention to give the rental unit to their two children. Filed in evidence is a letter from the landlord's child.

The tenants testified that they do not believe the landlord has issued the Notice in good faith. The tenants stated that the landlord keeps bringing in a different property management company to evict them.

The tenants testified that in early 2021 the landlord directly contacted them because they wanted to increase the rent by a few hundred dollars. The tenants stated that this was during the rent freeze and not in compliance with the allowable amount. The tenants stated that they would only agree to the allowable amount set out by the Residential Tenancy Branch for that year, even though there was a rent freeze.

Filed in evidence is a text message dated March 9, 2021, from the landlords' property manager that reads in part as follows:

“Thank you for sending me a copy of your reply to the Landlord’s request for a rent increase and I was sorry to hear that your discussion with him have not been well received. I have talked to [landlord] and he has asked me to try to resolve the issue ...He is preparing to send me some documentation in connection with the costs his is having to pay as soon as I receive this I will review it with you”

[Reproduced as written]

The tenants testified that the landlord’s agent then came back telling them they would have to pay for the utilities that were included in the rent. The tenants stated that they were then served with a One Month Notice to End Tenancy for Cause, issued in July 2021 and the hearing was held on November 25, 2021. The tenants stated that the Arbitrator determined that they had not breached the Act as the utilities were included in the rent and the notice to end the tenancy was cancelled. Filed in evidence is a copy of that decision.

The tenants testified that after that decision was issued the landlords replaced the property management company on February 17, 2022, and 5 days later they were told that they would have to vacate the property.

The tenants testified that they also believe the landlord purposely address the envelope containing the Notice, to themselves and only contacted them about the Notice after the dispute period had past. The tenant stated that the rental unit is in a hotel and the mail goes to the concierge for delivery to the named person. Filed in evidence is a letter from the concierge which supports the Notice was sent to another named person.

### 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 states a landlord may end a tenancy by giving notice to end the tenancy.

Residential Tenancy Policy Guideline (the “PG”) 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member. Part B. Good Faith reads in part the following:

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.

I am not satisfied that the landlords have met the “good faith” requirements as I am satisfied that the landlord had an ulterior motive for ending the tenancy. In early 2021 the landlords attempted to obtain a rent increase from the tenant’s that was contrary to the Act. Then in July 2021 the landlords served the tenants with a One Month Notice to End Tenancy for Cause, attempting to end the tenancy alleging the tenants had breach a material term of the tenancy by failing to pay for utilities. On November 25, 2021, the Arbitrator found that no breach occurred by the tenants as the utilities were included in the rent. Less than three months later the landlord served this Notice. I find it more likely than not that the landlord is ending the tenancy because they were unable to obtain a rent increase from the tenants and were unable to get the tenants to pay for the utilities that were included in the rent. Therefore, I grant the tenants’ application to cancel the Notice.

As the tenants were successful with their application, I find the tenants are entitled to recover the cost of the filing fee. I authorize the tenants a onetime rent reduction in the amount of \$100.00 from a future rent payable to the landlord.

### Conclusion

The tenants’ application to cancel the Notice is granted. The tenants are authorized a onetime rent reduction to recover the cost of the filing fee from the landlord.

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: July 20, 2022

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Residential Tenancy Branch