



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, FFL  
                             OPL-4M, FFL

### Introduction

This hearing convened as a result of two Applications filed by the Landlords. In the first Application, filed August 9, 2022, the Landlords sought an Order of Possession based on a 2 Month Notice to End Tenancy for Landlord's Use issued on March 31, 2022 (the "2 Month Notice") as well as recovery of the filing fee. In the second Application, filed on November 20, 2022, the Landlord sought an Order of Possession based on a 4 Month Notice to End Tenancy for Conversion of the Rental Unit to Non-Residential Use issued on October 9, 2022 (the "4 Month Notice") as well as recovery of the filing fee.

The hearing of the Landlords' Applications was scheduled for 9:30 a.m. on January 9, 2023. Both parties called into the hearing. The Tenant called in on their own behalf. The Landlords also called into the hearing as did their agent, M.M. and the Landlord's daughter S.Z. Both parties were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the

evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

*Preliminary Matter—Date and Delivery of Decision*

The hearing of the Landlords' Applications concluded on January 9, 2023. This Decision was rendered on February 14, 2023. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

*Preliminary Matter—Matters to be Decided*

At the outset of the hearing the Landlords' agent confirmed the Landlord wished to withdraw the 2 Month Notice as that notice had been delivered in error and prior to the Landlord seeking assistance from the agent. I therefore record the 2 Month Notice as having been withdrawn.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the 4 Month Notice?
2. Should the Landlords recover the filing fee?

Background and Evidence

The Landlords' daughter M.M. testified on behalf of the Landlords as follows. She stated that the Landlords purchased the property in March of 2022. Their intention was to operate their acupuncture business in the basement of the home as they have been working from their home since 2019. They erroneously believed that they should issue a 2 Month Notice to End Tenancy for Landlord's Use and did so by posting a notice to the rental unit door on March 31, 2022. The effective date of that Notice was April 3, 2022.

M. M. further stated that when the Landlords were informed they needed to issue the 4 Month Notice they did so by posting the Notice to the door on October 9, 2023. The

Landlords then phoned the Tenant two days later to discuss the 4 Month Notice. The Tenant informed the Landlords they would not dispute the 4 Month Notice and would move from the rental unit.

The Landlords submitted in evidence documents confirming they gave notice to the municipality in which the rental unit is located that they intended to remove the secondary suite and use the space as an “office”. The Landlords also submitted proof that they gave notice to the Acupuncture governing body of their intended location of practice in the rental unit.

In response to the Landlords’ claim the Tenant testified as follows. The Tenant stated that he did not apply to dispute the 4 Month Notice as he had received two notices and was confused. He confirmed he received a call from the Landlords’ daughter. He denied discussing the 4 Month Notice with M.M. yet confirmed he told her he would not dispute the Landlords request to end his tenancy provided he was able to stay in the rental unit until the end of the school year.

### Analysis

A tenancy may only be ended in accordance with the *Act*. In this case, the Landlords issued the 4 Month Notice pursuant to section 49(6)(f) which provides as follows:

#### **Landlord's notice: landlord's use of property**

**49** ...

(6)A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

...

(f)convert the rental unit to a non-residential use.

In this case the Landlord gave notice to the municipality that they intended to convert the secondary suite to an “office”. I find this to be ambiguous as it is not clear whether the Landlords intend to use the rental unit for a home office, or for commercial/business purposes. It is also not clear whether the Landlords require a zoning change for commercial use of the basement, or whether additional licensing is required.

When issuing a 4 Month Notice pursuant to section 49(6)(f) a Landlord must prove they have *all necessary permits and approvals required by law* to convert the rental unit to non-residential use *prior* to issuing the Notice. In this case, I find the Landlord has submitted insufficient proof that they have all such permits and approvals.

Guidance can be found in *Residential Tenancy Branch Policy Guideline 2B—Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use* which provides in part as follows:

#### B. PERMITS AND APPROVALS REQUIRED BY LAW

“Permits and approvals required by law” can include:

- demolition, building or electrical permits issued by a municipal or provincial authority;
- a change in zoning required by a municipality to convert the rental unit to a nonresidential use; or
- a permit or license required to use it for a new purpose. For example, if the landlord is converting the rental unit to a hair salon and the current zoning does not permit that use, the zoning would need to be changed before the landlord could give notice under section 49(6)(f) of the RTA.

...

If permits are not required for the change in use or for the renovations or repairs, a landlord must provide evidence such as written confirmation from a municipal or provincial authority stating permits are not required or a report from a qualified engineer or certified tradesperson confirming permits are not required.

In this case, I find the Landlords have failed to provide proof of a change in zoning from residential to business/commercial use, or that such a change is not required. As noted, such proof could be in the form of a letter from the municipality stating that a zoning change is not required. Similarly, I find the Landlords have failed to provide sufficient evidence to support a finding that they have all necessary permits or licenses to operate a business from the rental unit.

I therefore decline the Landlords’ request for an Order of Possession based on the 4 Month Notice. The Landlords’ request is dismissed with leave to reapply should the Landlords meet the requirements of section 49(6)(f).

Having been unsuccessful, the Landlords are not entitled to recover the filing fee.

Conclusion

The 2 Month Notice is withdrawn.

The Landlords' request for an Order of Possession based on the 4 Month Notice is dismissed with leave to reapply.

The Landlords request to recover the two filing fees paid for their applications is dismissed without leave to reapply.

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: February 14, 2023

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Residential Tenancy Branch