



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HUNTINGDON APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNL, CNR

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated November 10, 2014 ("10 Day Notice"), pursuant to section 46; and
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 31, 2014 ("2 Month Notice"), pursuant to section 49.

The tenant and the landlord's two agents, AL and ML (individually "landlord AL" and "landlord ML," and collectively "landlord"), attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The tenant's support advocate also attended the hearing but did not provide any testimony. The landlord ML is the building manager and husband of the landlord AL. The landlord AL is the director and shareholder of the landlord company named in this application.

The landlord ML testified that he personally served the tenant with the 2 Month Notice on October 31, 2014. The tenant confirmed receipt of the 2 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 2 Month Notice on October 31, 2014.

The landlord ML testified that he personally served the tenant with the 10 Day Notice on November 10, 2014. The tenant confirmed receipt of the 10 Day Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice on November 10, 2014.

The tenant testified that she personally served the landlord with her amended Application for Dispute Resolution hearing notice on November 17, 2014 and her first written evidence package on November 24, 2014 (collectively "Application"). The landlord ML confirmed receipt of the Application. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was served with the above documents as declared by the tenant.

The landlord testified that he personally served the tenant with his first and second written evidence packages on November 20 and 24, 2014, respectively. The tenant confirmed receipt of the second written evidence package only on November 24, 2014. However, the tenant stated that she already had the one page letter, dated November 10, 2014, which she signed, that was contained in the landlord's first written evidence package and she also attached it in her own Application. Accordingly, as per sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's second written evidence package as declared by the landlord above and that there is no prejudice to the tenant in considering the landlord's first written evidence package as it forms part of her Application as well.

During the hearing, the landlord AL made an oral request for an order of possession in the event that the tenant's applications to dismiss the notices to end tenancy, were dismissed.

#### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

#### Background and Evidence

The landlord ML testified that this tenancy began on November 18, 2013 for a fixed term of one year ending on November 30, 2014, after which the tenancy would continue on a month to month basis or for another fixed length of time. The tenant was not required by the tenancy agreement, to vacate the rental unit at the end of this fixed term period above. Monthly rent in the amount of \$650.00 is payable on the first day of each month. A security deposit of \$325.00 was paid by the tenant on November 18, 2013. The tenant continues to reside in the rental unit. A written tenancy agreement was provided by both parties.

The landlord AL testified that a 10 Day Notice was served upon the tenant because she failed to pay \$325.00 for November 2014 rent. However, the landlord ML confirmed that the tenant paid \$325.00 rent and the other \$325.00 was deducted from the tenant's security deposit. The landlord provided a letter on its company letterhead, dated November 10, 2014, signed by both parties, stating that the tenant authorized the landlord to use her security deposit towards a partial payment of November 2014 rent. This was at the landlord's suggestion, as the landlord drafted the letter. The landlord AL then stated that she was confused and unsure whether she should have issued the 10 Day Notice because the security deposit was used for the same amount that the landlord issued the 10 Day Notice for, and she was looking for direction from me with respect to this issue. The landlord said that the agreement to use the security deposit is based on the tenant agreeing to vacate the rental unit on December 31, 2014, a condition which is also stated in the above letter. However, December 31, 2014, was still 23 days away at the time of this hearing.

The landlord's 2 Month Notice, entered into written evidence by both parties, identified the following reasons for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

The landlord ML testified that he and his wife require the tenant's rental unit in order to occupy it because their residential home ("home") requires repairs for a water pipe break. He stated that the floors need to be replaced in the kitchen, living room and dining room, as they were damaged by water. The landlord provided an email from KR, dated November 24, 2014, from an insurance company, regarding a "water claim on July 15, 2014" stating that floors need to be replaced, which would require the landlord AL and ML to "move from the home for a while." The landlord also provided another email, from a telephone adjuster DC, dated July 15, 2014, requiring the landlord to pay a \$1,000.00 deductible for this water claim. The landlord ML confirmed that this deductible was paid two weeks prior to this hearing date. The landlord ML confirmed that he has not received a total estimate for the work to be done in his home and he did not provide any estimates for this hearing. The landlord AL testified that the work in the home will likely take about one month or so.

The landlord AL testified that she and her husband now wish to occupy the tenant's rental unit permanently. She stated that her children have moved out of the home and she does not require the large three bedroom home for herself and her husband. She said that her daughter was married on September 20, 2014 and moved out of the home, while her son moved out of town. The landlord AL testified that the decision to move permanently was made when her daughter got married. She stated that she did not wish to complete repair work before or during the wedding time, as she had guests in her home. No repair work was completed after September 20, 2014 until now, as the landlord expected the tenant to vacate the rental unit on November 30, 2014.

During the hearing, the landlord AL stated that she also required the tenant's rental unit because renovations are required to be completed in the tenant's rental unit. No estimates were provided for this work to be completed, as the landlord AL does not know the full extent of repairs required. She stated that there was a major leak in the unit which flooded the lobby below, drywall needs to be redone and the carpets, drapery and cabinets need to be replaced. She estimates two weeks for this work to be completed and stated that she will have the work done first before moving into the unit. However, the landlord did not issue the 2 Month Notice for this reason.

The landlord AL stated that no repairs were done to her home earlier because she believed that the tenant would vacate the rental unit earlier. The tenant produced two 1 Month Notices to End Tenancy for Cause ("1 Month Notices") with her Application, which were issued by the landlord to her earlier this year, although the landlord AL could not recall both notices. As per the tenant,

the first 1 month notice was dated February 17, 2014, which proceeded to a hearing on March 17, 2014, where the landlord withdrew the notice as she did not understand the burden of proof on her to prove the notice, and she had the option to issue a second notice. The landlord AL could not recall this hearing, although she wrote and signed a letter the next day, March 18, 2014, to the tenant about the hearing. The second 1 month notice was dated March 31, 2014, and was scheduled for a May 29, 2014 hearing, but it did not go ahead as the issue was settled beforehand, where the landlord AL said that the tenant orally agreed to move out of the rental unit on November 30, 2014. The tenant denied this agreement. The tenant said that both 1 Month Notices were issued because the landlord said that she had another tenant living in her rental unit with her, which she denies. The above letter from the landlord, dated March 18, 2014, was produced by the tenant, stating that she breached the tenancy agreement by having another tenant in her unit, requiring this other tenant to pay rent, and requiring evidence that this other tenant does not live at the rental unit. The letter further states that if the tenant does not produce this evidence, she will be issued another eviction notice. Moreover, the letter confirms that the landlord will not be renewing the tenant's fixed term lease and it will expire at the end of November 2014.

The rental unit was shown to prospective tenants in March and April 2014. The tenant produced seven 24-hour notices, of which five were for showing the unit to prospective tenants, and the other two were for inspections of the rental unit. The tenant stated that the landlord issued these notices, did not show up for any entries, and did not cancel the entries ahead of time. The landlord said that these notices were to enter the unit to assess the repair work to be done and also to show the rental unit to prospective tenants in the event that the tenant was evicted due to the two 1 Month Notices they issued.

The landlord ML testified that the tenant signed his letter, dated November 10, 2014, agreeing to vacate the rental unit on December 31, 2014. The tenant stated that she signed the letter agreeing to move on the above date only if she was ordered to do so at this hearing and that she always intended to dispute that fact before the RTB. She stated that initially she was not aware that she could remain in the rental unit after November 30, 2014 because the landlord told her that her lease expired on that date and she had to move out. However, the tenant testified that she contacted the Residential Tenancy Branch and was advised that she could remain in the rental unit because her tenancy agreement states that the tenancy reverts to a monthly tenancy or another fixed term, after November 30, 2014, a fact which the landlord ML confirmed.

The landlord AL testified that a 1 bedroom unit would be available in the next 5 weeks in the rental building, on the first floor, as that occupier just provided notice to vacate. During the hearing, the landlord AL initially stated that there were no other units available in the rental building and then later stated that the above unit was available. She offered this unit to the tenant, as it was still available, but at a rent of \$175.00 extra per month, which the tenant declined due to the increase in the monthly rent for that unit. The tenant stated that plumbing issues in her rental unit have predated her tenancy, causing flooding to the lobby below. She

doubted the sincerity of the landlords' claim that they are seeking her rental unit as their primary residence. The tenant stated that the unit is a small bachelor suite of approximately 450 square feet which would be too small for two adults to occupy and that her own male friend did not move into her rental unit for that same reason. The landlord AL stated that there is enough room in the tenant's rental unit for both her and her husband to fit a king size bed and install an in-suite laundry in the kitchen area. The tenant stated in her Application that the landlord manages several other buildings in addition to this rental building and that another unit may be more suitable for the landlord's needs.

The tenant testified that the landlord has been attempting to evict her since the first month of her tenancy and that this tenancy relationship has been difficult throughout the entire time. She stated that the landlord issued two 1 Month Notices to evict her when there were no other tenants living with her at her rental unit. The tenant claimed that the landlord has not issued this 2 Month Notice in good faith. She further stated that the building is quiet, no signs have been posted regarding any break-ins in the building, the landlord has not provided any proof of break-ins, and there are security cameras and underground locked areas for security. The landlord AL stated that the security cameras were damaged 4 months ago and were not fixed because the landlord did not have the money to fix it. The tenant stated that there are two units on either side of her and one above her, that overlook the front entrance for the landlord to occupy, in order to watch over tenants. However, the landlord AL stated there is no vacancy in the building currently, except for the one unit mentioned above.

### Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, notices, e-mails and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

### 10 Day Notice

According to subsection 46(4) of the Act, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant receives the notice. The tenant received the 10 Day Notice on November 10, 2014, and filed her amended Application on November 14, 2014. Therefore, she is within the five day time limit under the Act. The onus, therefore, shifts to the landlord to justify the basis of the 10 Day Notice.

The landlord suggested that the tenant use her security deposit towards November 2014 rent. Both parties agreed to this term and the landlord applied the tenant's security deposit towards November 2014 rent. The landlord confirmed receipt of the other \$325.00 of the \$650.00 total rent, from the tenant. Given the above, and the uncertainty surrounding the landlord's issuance of the 10 Day Notice, I find that there is no outstanding amount of rent owed by the tenant for November 2014.

Accordingly, I allow the tenant's application to cancel the 10 Day Notice. The 10 Day Notice, dated November 10, 2014, is hereby cancelled and of no force and effect. I decline to issue an order of possession to the landlord on this basis.

### 2 Month Notice

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on October 31, 2014, and filed her amended Application on November 14, 2014. Therefore, she is within the 15 day time limit under the Act. The onus, therefore, shifts to the landlord to justify the basis of the 2 Month Notice.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*"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 that they do not have an ulterior motive for ending the tenancy."*

The landlord has stated a number of different reasons for issuing the 2 Month Notice. One is that the landlord expected the tenant to move out by November 30, 2014, and because she did not move out, the notice was issued. Another reason is that the tenant's rental unit requires repairs, although no estimates were provided for the amount or time such repairs might take. The landlord showed the tenant's unit to other prospective tenants in March and April 2014, when the two 1 Month Notices were issued. At that time, the landlord was prepared to enter into another tenancy with other tenants but not with this tenant, despite the fact that repairs have been required in this unit for some time, given the ongoing water leakage problem.

The landlord issued two previous 1 Month Notices earlier this year for other reasons, including that another tenant was occupying this tenant's rental unit, and the landlord stated during that

time, that the intention was for this tenancy to be terminated at the end of November 2014. The landlord also issued a 10 Day Notice, that is the subject of this Application as well, 10 days after issuing the 2 Month Notice to the tenant. The landlord admitted that the reason for this 10 Day Notice was unclear and confusing.

A further reason is that the landlord's home is undergoing repairs, which is the main reason the 2 Month Notice was issued in the first place, as this is the only documentary evidence the landlord filed at the hearing. No monetary or time estimates were provided for the work to the landlord's home, although the landlord AL estimated that it might take approximately one month. Another reason for issuing the 2 Month Notice is that the landlord now wishes to occupy the tenant's rental unit because the landlords AL and ML's daughter has recently married and they want to move permanently to a smaller unit and rent out their home. An additional reason is that the landlord requires the tenant's rental unit specifically because it is strategically placed at the front of the rental building overlooking the entrance, in order to manage tenants better, given all the break-ins and partying in the building at night.

It seems that this tenancy has had a number of difficulties that have been ongoing for some time. I find that the landlord had a number of ulterior motives for issuing the 2 Month Notice and it was not done in good faith.

The landlords AL and ML did not state why they cannot occupy the alternative unit in the same rental building that they offered to the tenant, given that it will be vacant at approximately the same time that they require the tenant's rental unit, as the effective date they have stated on the 2 Month Notice is December 31, 2014. They have also stated that at least two weeks are required to renovate the tenant's unit before they can move into the unit, in any event. This alternative one bedroom unit would likely be larger and better suited to two occupants, compared to the studio suite that the tenant currently occupies. This alternative unit is also on the first floor, whereas the tenant resides on the second floor, thereby enabling the landlord to be closer to the entrance of the building, given that it is near the main buzzer.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met its onus of proof to show that the landlord intends to occupy the tenant's rental unit in good faith.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice, dated October 31, 2014, is hereby cancelled and of no force and effect. I decline to issue an order of possession to the landlord on this basis.

### Conclusion

Both the 10 Day Notice and 2 Month Notice are hereby cancelled and of no force and effect. I decline to issue an order of possession to the landlord.

This tenancy continues until it is ended in accordance with 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: December 11, 2014

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Residential Tenancy Branch



