



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, OLC, FF

### Introduction

This hearing addressed the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") to:

- cancel a 2 Month Notice to End Tenancy for Landlord Use of Property ("2 Month Notice"), pursuant to section 49;
- order the landlord to comply with the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant LH (the "tenant"), landlord and landlord's agent attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by legal counsel. The landlord confirmed receipt of the tenant's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application.

### Preliminary Issue – Jurisdiction

The landlord contended that there was no tenancy in place. Rather in an effort to help a friend in need, the landlord allowed the tenant to stay in the unit until such time the landlord required the property for his own use or until he had the property developed. The landlord did not draft nor sign a tenancy agreement. The landlord did not demand or collect a security deposit or rent in the four years the tenant has occupied the unit. The landlord testified that he has made multiple requests for the tenant to vacate since August of 2015 to which the tenant refused. At the tenant's request to use the proper Residential Tenancy Branch form to end the tenancy, the landlord issued a 2 Month Notice.

The tenant testified that the landlord drafted a tenancy agreement and the tenancy commenced October 1, 2011. The tenant submitted a copy of the tenancy agreement

that indicates a month to month tenancy with rent in the amount of \$1.00 payable on the first of each month. The tenant testified that she did not provide a security deposit, however she provided the landlord with a piece of valuable art to be held in trust. The tenant understood she was to live in the unit rent free until permits were acquired for redevelopment. The tenant acknowledged she has not paid any form of rent to the landlord in the four years she has occupied the unit, but contended her daughter once paid the landlord \$2,000.00. The tenant testified that she regularly paid the utilities but not the property taxes.

As per Section 2 of the *Act*, the *Act* applies to tenancy agreements, rental units and other residential property. Tenancy agreement is defined in section 1 of the *Act* as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Pursuant to *the Residential Tenancy Policy Guideline 9. Tenancy Agreements and Licenses to Occupy*, a licence to occupy is a living arrangement in which a person or licensee is given permission to use a site or property in which permission to occupy may be revoked at any time.

I find that although the tenant did not pay rent, she was granted permission by the landlord to occupy the rental unit thereby establishing a licence to occupy. Accordingly I find this matter falls within the jurisdiction of the Residential Tenancy Branch.

#### Issue(s) to be Decided

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

Is the tenant entitled to an order for the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this Application from the landlord?

#### Background and Evidence

In October of 2011, the tenant began occupying the rental unit with the permission of the landlord. No rent was paid however the tenant paid utility costs. As stated above, since August of 2015, the landlord has made repeated requests to the tenant to vacate.

On May 12, 2016 the landlord issued the 2 Month Notice by way of posting to the rental unit door, indicating that a family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares. The notice indicates an effective move-out date of August 1, 2016. The tenant confirmed receipt of the 2 Month Notice by way of posting to her door. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice, on May 15, 2016, three days after its posting.

### Analysis

I have made the preliminary determination that the tenant's occupancy of the rental unit amounts to a licence to occupy that falls within the definition of tenancy agreement under the *Act*.

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Although the tenant filed an application to dispute the 2 Month Notice, the tenant did not file the application within 15 days. The 2 Month Notice was deemed served May 15, 2016 which allowed the tenant until May 30, 2016 to file her application. The tenant filed her application on June 3, 2016, four days after the allowable time. The tenant did not provide a reason for filing the application late. Based on the 2 Month Notice before me, I find that the tenant was served with an effective notice.

For the reasons stated above, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. I find that the landlord is entitled to an order of possession effective August 1, 2016.

The tenant failed to provide evidence in relation to her claim for an order for the landlord to comply with the *Act*, *Regulation* or tenancy agreement. Accordingly this portion of the tenant's claim is dismissed.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an order of possession to the landlord **effective at 1:00 p.m. on August 1, 2016.**

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 21, 2016

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Residential Tenancy Branch

