



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, OPC, OPL, MNR, MND, MNDC, MNSD, FF; CNL, MNDC, FF

### Introduction

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

- an order of possession for unpaid rent, cause and landlord use pursuant to section 55;
- a monetary order for unpaid rent, damage and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

During the hearing the landlord acknowledged that she did not serve a 10 Day Notice for Unpaid Rent or a 1 Month Notice for Cause. The parties confirmed that the only notice the landlord served was a 2 Month Notice for Landlord Use. Accordingly, the

landlord can only seek an order of possession in relation to the 2 Month Notice and the remaining claims in relation to orders of possessions are dismissed.

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 2 Month Notice and if there was enough time to hear the parties remaining claims, I would hear them. At the end of the hearing, I advised both parties that there was not enough time to hear the parties remaining claims, as 60 minutes had already expired in the hearing. I have addressed the remainder of the parties' claims in the conclusion section of this decision, below.

#### 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?

#### Background and Evidence

As per the testimony of the parties, the tenancy began on May 1, 2008 on a month-to-month basis. Rent in the amount of \$694.54 is payable on the first of each month. The tenant continues to reside in the rental unit.

This tenancy was the subject of an arbitration hearing held June 29, 2016. The Arbitrator in this hearing determined that the 2 Month Notice issued by the landlord on May 24, 2016 was invalid and the tenancy would continue until ended in accordance with the *Act*. For ease of reference, the file number for this hearing is set out on the front page of this decision.

The tenant acknowledged receipt of the landlord's 2 Month Notice dated July 13, 2016 on the same date, by way of posting to the rental unit door where the tenant resides. The 2 Month Notice indicated the ground to end tenancy was that the rental unit will be occupied by the landlord or the landlord's close family member

#### *Landlord*

It is the landlord's position that her granddaughter will be occupying the rental unit effective October 1, 2016. The landlord gained permission from her own strata council to have her granddaughter temporarily reside with her unit the rental unit becomes

available October 1, 2016. In an effort to support her claim, the landlord provided copies of the correspondence between herself, strata and granddaughter.

### *Tenant*

The tenant explained that the 2 Month Notice he received in May of 2016 was in the form of typed letter and was in regards to selling the rental unit. The tenant testified that upon receiving the previous Arbitrator's decision in the mail, he received the most recent 2 Month Notice. The tenant contends that the most recent 2 Month Notice was issued in response to the landlord's ongoing allegation that he has prevented the sale of the rental unit.

### Analysis

The *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The tenant questioned the good faith of the landlord suggesting the 2 Month Notice was a direct result of the sale dispute. When the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to use the rental unit for the purposes stated on the 2 Month Notice.

Although the landlord provided documents in the form of letters and emails to support her position that her granddaughter would reside in the rental unit, each of these forms of correspondence were dated after the 2 Month Notice was issued. Specifically, the landlord did not seek her strata's approval for her granddaughter to reside with her until July 15, 2016, two days after the 2 Month Notice was issued. The strata did not reply to the landlord until July 25, 2016. Therefore the landlord did not have confirmation that her granddaughter could temporarily reside with her until twelve days after the 2 Month Notice was issued to the tenant. As evidenced by the granddaughter's email, the landlord only learned of her granddaughter's August 2, 2016 arrival date on July 27, 2016. Accordingly, I find the landlord has provided insufficient evidence to show on a balance of probabilities that at the time of issuing the 2 Month Notice, the landlord sought to end the tenancy for her granddaughter to occupy the rental unit. I find it more probable that the landlord sought to end the tenancy in an effort to end the ongoing dispute between her and the tenant.

Based on these reasons I find the landlord has not acted in good faith in issuing the 2 Month Notice. Accordingly, I uphold the tenant's application to cancel the 2 Month Notice.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

### Conclusion

The tenant's application to cancel the 2 Month Notice is upheld and the tenancy is to continue until it is ended in accordance with the *Act*.

The tenant is entitled to deduct \$100.00 from future rent in satisfaction of the monetary award to recover the filing fee.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed with leave to reapply.

The landlord's application for an order of possession for unpaid rent and cause are dismissed with leave to reapply. The landlord must use the approved forms under the *Act*.

The landlord's application for a monetary order for unpaid rent, damage and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed with leave to reapply.

The landlord's application to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested is dismissed with 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: September 08, 2016

---

Residential Tenancy Branch