



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, CNL, OLC

### Introduction

This hearing dealt with a tenant's application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* and a *2 Month Notice to End Tenancy for Landlord's Use of Property*. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

The tenant testified that he sent the landlord a copy of his Application for Dispute Resolution via registered mail on August 19, 2016. The landlord's lawyer submitted that the landlord did not receive the tenant's Application although she did receive other hearing documents including: the Notice of Hearing and the Dispute Resolution Fact Sheet; a copy of the 10 Day Notice and Notice of Rent Increase. In response to receiving these documents, the landlord issued a written statement to the tenant and provided a copy to the Residential Tenancy Branch indicating she had issued the 10 Day Notice in error. Whether the landlord received the tenant's Application or not, I was satisfied that the landlord understood that this hearing was set to deal with the issuance of a 10 Day Notice and a rent increase. The landlord confirmed that she seeks to withdraw the 10 Day Notice and the tenant had no objection to its withdrawal. As such, I considered this matter resolved and I cancelled the 10 Day Notice.

In filing the Application, the tenant had also indicated the dispute code associated to seeking orders for compliance; however, in the details of dispute the tenant referred only to a Notice to End Tenancy for Unpaid Rent and a Notice of Rent Increase. No other matters were indicated on the Application or the documentation that accompanied it. However, the tenant provided written submissions to the Branch on September 15, 2016 and to the landlord on September 16, 2016 in an attempt to raise other issues at the same time he served his Amendment. The Amendment does not indicate other issues under dispute except for receipt of a 2 Month Notice to End Tenancy for

Landlord's Use of Property on September 3, 2016. As the parties were informed during the hearing, the Act requires that an applicant provide full particulars as to the nature of the dispute in filing an Application. The original application did not indicate any issues other than a 10 Day Notice and a rent increase. The Amendment indicated the tenant sought to dispute a 2 Month Notice. Accordingly, I did not hear submissions concerning matters other than those clearly set out on the Application or Amendment and since the 10 Day Notice had been withdrawn, the only remaining matter to resolve was the validity and enforceability of the 2 Month Notice.

As the parties were informed during the hearing, should the parties seek dispute resolution with respect to other matters, they remain at liberty to file another Application.

#### Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 1, 2016 be upheld or cancelled?

#### Background and Evidence

The tenancy started on May 1, 2014. The tenant paid a security deposit of \$391.00 and pursuant to a Notice of Rent Increase the current monthly rent is \$804.06 per month.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property on September 1, 2016 and posted it on the door of the rental unit. The tenant acknowledged receipt of the 2 Month Notice as of September 3, 2016 and filed to dispute the 2 Month Notice within the time limit for doing so.

The second page of the 2 Month Notice does not indicate a reason for ending the tenancy. The landlord testified that she forgot to check off one of the reasons on the 2 Month Notice. As to which reason she would have checked the landlord indicated that none of the reasons provided on the 2 Month Notice apply but that she provided a written statement along with the 2 Month Notice. The tenant acknowledged that the written statement did accompany the 2 Month Notice he was received.

The written statement was provided as evidence. Among other things, the landlord indicates in the written statement that "the property" requires extensive renovation and the tenant "can't get along with construction workers" and that the landlord received a telephone call from an Officer with the Residential Tenancy Branch indicating that the tenant has complained that he could not "get around the property". The landlord also makes a statement with respect to the tenant needing to pay for electricity and gas.

In hearing from the tenant, the tenant stated that he did not know which reason the landlord intended to indicate on the 2 Month Notice.

### Analysis

Where a landlord issues a Notice to End Tenancy, section 52 of the Act provides that the landlord must provide the reason for ending the tenancy and requires the landlord to use a Notice to End Tenancy that is in the approved form. Reasons a landlord may issue a Notice to End Tenancy are provided under sections 46 through 49 of the Act. Accordingly, if a landlord serves a Notice to End Tenancy to a tenant it must be for a reason that is provided under sections 46 through 49 of the Act.

In this case, the landlord served a 2 Month Notice that is in the approved form; however, the Notice does not indicate a reason for ending the tenancy in the space provided on the form. A 2 Month Notice may be served if the landlord seeks to end the tenancy for one of the reasons provided under section 49 of the Act.

Residential Tenancy Policy Guideline 11: *Amendment and Withdrawal of Notices* provides policy statements with respect to amending a Notice to End Tenancy. It provides, in part:

#### **Notice to End Tenancy**

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act (the Legislation) set out the requirements for giving a Notice to End Tenancy. The Legislation allows an arbitrator, on application, to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in the circumstances.

In determining if a person "should have known" particular facts, an arbitrator will consider whether a reasonable person would have known these facts in the same circumstances. In determining whether it is "reasonable in the circumstances" an arbitrator will look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

The tenant stated that he did not know the reason the landlord intended to indicate on the 2 Month Notice. I have considered with the written statement that accompanied the 2 Month Notice conveys information so that a reasonable person would have had to have known what reason should have been indicated on the 2 Month Notice.

Upon review of the written statement, I was of the view that it pointed to circumstances that may be a basis for issuing a 2 Month Notice (such as renovation or repairs) or a 1 Month Notice to End Tenancy for Cause (such as interference with the landlord's lawful right to repair the property); however, in order to end a tenancy for repairs or renovations under section 49 of the Act, the renovations or repairs must be such that the that rental unit needs to be vacant and applicable permits have already been obtained. The written statement does not indicate these circumstances exist. Therefore, I find that there is insufficient information conveyed so that a reasonable person knew or ought to have known the reason for ending the tenancy under section 49 and I decline to amend the 2 Month Notice.

Without indicating a valid reason for ending the tenancy I find that the 2 Month Notice dated September 1, 2016 is invalid and not enforceable. Accordingly, I cancel it with the effect that this tenancy continues at this time.

### Conclusion

The 10 Day Notice dated August 12, 2016 was withdrawn by mutual consent.

The 2 Month Notice dated September 1, 2016 has been cancelled and the tenancy continues at this time.

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: October 12, 2016

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Residential Tenancy Branch

