



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL OLC ERP PSF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

The landlord did not attend this teleconference hearing which lasted approximately 30 minutes. The tenant attended, assisted by her daughters who acted as interpreters and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that they received a 2 Month Notice dated January 15, 2018 on January 14, 2018 personally. The tenant said that they served the tenant's application for dispute resolution and evidence on the landlord personally on January 24, 2018. The tenant's son appeared as a witness and testified that he was with the tenant when she attended at the landlord's residence on the evening of January 24, 2018 and handed the landlord the hearing package. Based on the undisputed testimony I find that the landlord was personally served with the tenant's application for dispute resolution and evidence on January 24, 2018 in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Should the landlord be ordered to make emergency repairs to the rental unit?

Should the landlord be ordered to provide services or facilities agreed to in the tenancy agreement?

Background and Evidence

The tenant acknowledged receipt of the 2 Month Notice and testified they filed an application for dispute resolution and served it on the landlord personally on January 24, 2018.

The tenant testified that this month-to-month tenancy began in September, 2013 and the current rent is \$1,300.00 payable on the first of each month. The tenant believes that there is a written tenancy agreement but one was not submitted into evidence. The tenant said that the landlord demanded and collected rent in full for the month of March, 2018 despite having issued a 2 Month Notice.

The tenant testified that there is a crack in the ceiling of the living room causing water leakage when it rains. The tenant gave evidence that the landlord uses the yard, parking space and garage despite those areas being included in the tenancy agreement.

Analysis

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 fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I accept the undisputed evidence that the 2 Month Notice was received on January 14, 2018 and the tenant filed an application for dispute resolution on January 24, 2018. I find that the tenant was within the time limit provided by the *Act* to dispute the 2 Month Notice.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 2 Month Notice. Because the landlord did not attend the

hearing, I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the 2 Month Notice.

The tenant seeks an order that the landlord comply with the Act, regulations and tenancy agreement by communicating with the tenant in a respectful manner and stop all harassment. I find that there is insufficient evidence that the landlord has violated the Act, requiring an order that he comply. Consequently, I dismiss this portion of the tenant's application.

The tenant seeks an order that the landlord perform emergency repairs, specifically fixing the ceiling of the rental unit to prevent water leaks. The tenant testified that the leaks cause the living room of the rental unit to be unpleasant and that this condition has been persistent for several years.

The tenant seeks an order that the landlord comply with the tenancy agreement and submits that the landlord is occupying areas of the rental unit, the yard, garage and driveway, which are included in the tenancy agreement.

I find that there is insufficient evidence in support of these portions of the tenant's claim. The tenant's documentary submission consists of photographs of the rental suite and some text message conversations. I find in the absence of a written tenancy agreement I am unable to find that the areas of the property currently used by the landlord are meant to be for the exclusive use of the tenant. I find that the photographs of the ceiling is insufficient to conclude that repairs are urgent, necessary for health or safety of the occupants or is the source of major leaks. Accordingly, I dismiss this portion of the tenant's application.

Conclusion

The tenant's application to cancel the 2 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

The balance of the tenant's application 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: March 23, 2018

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Residential Tenancy Branch