



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

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

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she personally served the landlord with the Dispute Resolution hearing package on April 28, 2018. The landlord confirmed this service. In accordance with section 89 of the *Act*, I find that the landlord was served with the Dispute Resolution hearing package on April 28, 2018.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Issue(s) to be Decided

1. Should the landlord's Two Month Notice be cancelled?
2. If the landlord's Two Month Notice is not cancelled is the landlord entitled to an Order of Possession?
3. Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their submissions and arguments are reproduced here. The

relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agree on the following facts. This tenancy began in June 2016 and is currently ongoing. Monthly rent in the amount of \$850.00 is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties but a copy was not provided for this hearing.

On April 4, 2018, a Two Month Notice to End Tenancy for Landlord's Use of Property was posted on the tenant's door, with an effective date of June 1, 2018. On April 11, 2018 a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of June 15, 2018 was posted on the tenant's door. On April 27, 2018 a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of June 30, 2018 was posted on the tenant's door. All three notices state that the reason for issuing the 2 Month Notices is that "all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The landlord testified that she issued three notices because she kept getting the effective date required under the act incorrect. The landlord further testified that the last notice, dated April 27, 2018 has the correct effective date.

The tenant argued that the landlord was acting in bad faith as the landlord did not evict the other tenants in the house, who have separate suites from the tenant. The tenant testified that she applied for dispute resolution on April 26, 2018.

The landlord testified that all of the tenants of the house are required to move out as the new owner wants vacant possession of the house.

When questioned about the details of the sale of the property the landlord testified that she did not know if the conditions of sale had been satisfied, when the conditions would be satisfied, the date the new owner took possession or the name of the new owner. Later in the hearing the landlord changed her testimony and stated that the conditions of sale had been satisfied.

When asked what the conditions of sale were, the landlord testified that the only condition of sale was vacant possession of the house. The landlord testified that she did

not receive a written request from the buyer to give the Two Month Notices to the tenant. The landlord testified that the buyer told her real estate agent who told her that vacant possession was required.

The landlord did not submit into evidence any contract of sale documents regarding the sale of the rental property.

### Analysis

While the third Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 27, 2018 was posted on the tenant's door after the tenant filed for dispute resolution, I find that upon receiving the tenant's application for dispute resolution on April 28, 2018, the landlord knew or ought to have known that this hearing would deal with the Two Month Notice dated April 27, 2018. Pursuant to section 62, I find that the previous two, Two Month Notices, are of no force or effect and that this decision will be based on the Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 27, 2018 (the "Two Month Notice").

Section 49(5) of the *Act* states:

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
  - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

In this case, the landlord provided affirmed testimony that she has failed to meet the requirements set forth in section 49(5)(c) of the *Act*, to end this tenancy. The landlord testified that she did not receive written notice from the purchaser that the purchaser wanted vacant possession of the unit; she testified that the purchaser orally told the landlord's real estate agent, who then told her.

I find that the landlord did not meet the burden of proof to establish that a sale of the rental property occurred. The landlord provided inconsistent and vague answers regarding the particulars of the sale of the property which were unsupported by any physical evidence such as a purchase of sale agreement. On these grounds and the grounds listed in the paragraph above, I find that the Two Month Notice is of no force or effect. As the Two Month Notice is of no force or effect, the landlord is not entitled to an Order of possession.

#### Conclusion

I find that the landlord has not complied with the requirements of section 49(5)(c) of the *Act* to end this tenancy **and** has not met the burden of proof required to uphold the Two Month Notice. Consequently, I order the Two Month Notice is of no force or effect and is cancelled.

As the tenant was wholly successful in her application, she is entitled to recover the filing fee for this application from the landlord. I Order, pursuant to section 72 of the *Act*, that the tenant withhold \$100.00 from rent due to the landlord on July 1, 2018. Rent due to the landlord on July 1, 2018 will be in the amount of \$750.00.

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: June 7, 2018

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Residential Tenancy Branch