



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI ERP CNL FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 13, 2018, as amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy branch on October 2, 2018 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order relating to a disputed rent increase;
- an order that the Landlord make emergency repairs for health or safety reasons;
- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated October 1, 2018 (the "Two Month Notice"); and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and was assisted by H.P. The Landlord attended the hearing and was assisted by L.K.

On behalf of the Landlord, L.K. acknowledged receipt of the Application package, which was served by registered mail. Further, H.P. advised the Amendment to an Application for Dispute Resolution was served on the Landlord by leaving a copy in the mailbox when service in person was refused. On behalf of the Landlord, L.K. stated it was not received. However, I am satisfied there is no prejudice in proceeding with the Tenant's request to cancel the Two Month Notice issued by the Landlord.

In addition, L.K. testified the documentary evidence to be relied upon by the Landlord was served on the Tenant. The Tenant denied receipt. In any event, upon review, the Landlord's documentary evidence contained information relating to the payment of rent or documents already relied upon by the Tenant. Accordingly, as above, I am satisfied there is no prejudice in proceeding with the Tenant's request to cancel the Two Month Notice issued by the Landlord.

The parties were in attendance and were prepared to proceed. They were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request for an order cancelling the Two Month Notice and to recover the filing fee, with leave to reapply.

#### Issues to be Decided

1. Is the Tenant entitled to an order cancelling the Two Month Notice?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

#### Background and Evidence

On behalf of the Tenant, H.P. advised the tenancy began about 7 years ago. H.P. stated the Tenant originally paid \$500.00 per month. However, the Landlord increased rent to \$650.00 per month on October 1, 2017. H.P. also stated the Landlord has recently advised the Tenant of an intention to increase rent to \$800.00 per month. The parties agreed a security deposit of \$200.00 - \$250.00 was paid at the beginning of the tenancy.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the Two Month Notice on the basis that the Landlord or a close family member intends in good faith to occupy the rental unit. The Amendment to an Application for Dispute Resolution, referred to above, confirms receipt of the Two Month Notice on October 1, 2018.

On behalf of the Landlord, L.K. stated the Landlord's family members will be moving into the rental unit for three months, commencing October 28, 2018. L.K. also stated on several occasions that the Tenant has not paid the requested rent increase and that the Landlord would be changing the locks to the rental unit.

In reply, H.P. submitted that the Landlord merely wishes to increase rent contrary to the *Act*, and that he witnessed such a conversation between the Tenant and the Landlord.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49 of the *Act* permits a landlord to take steps to end a tenancy for the reasons enumerated therein. In this case, the Two Month Notice was issued on the basis that the Landlord or a close family member intends in good faith to occupy the rental unit.

I have considered the evidence and submissions of the parties. I find there is insufficient evidence before me to uphold the Two Month Notice. The Landlord's evidence is that the Landlord's family members would be visiting for 3 months but would not be occupying the rental unit on a permanent basis. That is not the purpose for ending a tenancy under section 49 of the *Act*. This conclusion is supported by section 51 of the *Act*, which provides compensation to a tenant when a landlord does not use the property for the stated purpose *for at least six months* beginning within a reasonable period after the effective date of the notice. Accordingly, I find that the Two Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application, which I order may be deducted from a future rent payment at the Tenant's discretion.

The Tenant remains at liberty to apply for further relief as appropriate.

***The parties are strongly encouraged to review and consider their rights and responsibilities as contained in the Act and Regulation. Specifically, the Landlord may wish to review provisions relating to the parties' obligation to repair and maintain rental premises (s. 32) and rent increases (s. 41). The parties may also contact an information officer at the Residential Tenancy Branch for further assistance.***

Conclusion

The Two Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

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 18, 2018

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Residential Tenancy Branch