



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNL, MNDCT, FFT

### Introduction

The hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use, for a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on October 05, 2018 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents.

On October 03, 2018 the Tenant submitted a copy of the Two Month Notice to End Tenancy to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord, although he does not recall the exact date of service. The Landlord stated that he did not receive this evidence.

The parties were advised that I could not accept the Two Month Notice to End Tenancy as evidence for these proceedings, as the Landlord did not acknowledge receiving this document. The parties were advised that if, at any point in the hearing it was determined that I needed to view this document to determine the merits of the Tenant's Application for Dispute Resolution, the hearing would be adjourned to provide the Tenant with the opportunity to re-serve this document. I am satisfied that I am able to determine the merits of the Tenant's Application for Dispute Resolution without viewing the Two Month Notice to End Tenancy and this matter was, therefore, concluded without the need for an adjournment.

On October 31, 2018 the Tenant submitted 32 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord, although he does not recall the exact date of service. The Landlord acknowledged receiving this evidence, although he cannot recall the date it was received, and it was accepted as evidence for these proceedings.

On November 09, 2018 the Landlord submitted 13 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant on November 08, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

### Preliminary Matter

The Tenant applied for a monetary Order of \$2,000.00. In his Application for Dispute Resolution the Tenant described his claim as:

- 1) Existing rental from Oct 2015, (3) Siblings as Landlord all absentee (Names redacted for privacy reasons) was primary landlord contact 2) Rental amount from Oct 2015 was \$850 (includes managing minor repairs), Utilities and Storage (insuite) and Storage in Garage included 3) March 31 (name redacted for privacy reasons) moves and takes possession and is new Landlord 4) April 2018 rent increased from \$850 to \$950 Utilities and Storage\* (insuite) and Storage\* in Garage included 5) Sept26 Notice given

At the hearing the Tenant was asked to explain why he was seeking compensation of \$2,000.00 and he stated that it was in compensation for stress associated with service of the Two Month Notice to End Tenancy.

Section 59(2)(b) of the *Residential Tenancy Act (Act)* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Tenant's Application for Dispute Resolution does not provide full details of his claim for a monetary Order.

Specifically I find that the Tenant did not clearly inform the Landlord did not clearly inform the Landlord that his claim for \$2,000.00 related to stress associated to being served with a Two Month Notice to End Tenancy. I find that the details the Tenant did provide do not make any mention of "stress" and, in my view, do not clearly inform the Landlord of the nature of the monetary claim.

I find that it would be prejudicial to the Landlord to proceed with the Tenant's monetary claim, as the limited information provided makes it difficult, if not impossible, for the Landlord to prepare a response to that claim. The Tenant's claim for a monetary Order is therefore dismissed, with leave to reapply.

#### Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

#### Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2014, at which time the property was owned by the Landlord's father.

The Landlord stated that:

- this rental unit was initially advertised for rent at a monthly rate of \$950.00;
- the Tenant subsequently agreed to pay monthly rent of \$850.00;
- the Tenant agreed that he would perform various tasks in relation to the rental unit in lieu of paying the asking rent of \$950.00;
- when the current Landlord moved into the rental unit the Tenant was told his services were no longer required;
- the parties mutually agreed that the Tenant would begin paying rent of \$950.00, effective March 01, 2018; and
- the mutual agreement to increase the rent to \$950.00 was not made in writing.

The Landlord and the Tenant agree that sometime in the latter portion of September of 2018 the Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property. In his written submission the Tenant declared that this Notice was served to the Tenant on September 26, 2018.

Neither the Landlord nor the Tenant had a copy of the Two Month Notice to End Tenancy with them at the time of the hearing, however they agree that:

- the Notice to End Tenancy declared that the Tenant must vacate the rental unit by November 30, 2018; and
- the Notice to End Tenancy declared that the tenancy was ending because the Landlord intended to move into the rental unit.

The Landlord stated that:

- the Notice to End Tenancy was served to the Tenant because he intends to move into the rental unit;
- he has been living in the upper portion of the residential complex for approximately 6 months;
- the upper portion of the complex is significantly larger than the rental unit;

- he does not have enough furniture to fill the upper portion of the residential complex;
- he would like to rent out the upper portion of the complex as it will generate more revenue than the rental unit is currently generating;
- the smaller rental unit is more suitable to his current needs;
- he considered finding a roommate to share the upper portion of the complex in an effort to afford to remain in the upper portion;
- he considered renting rooms in the upper portion of the complex for short term rentals in an effort to afford to remain in the upper portion;
- he considered moving into another rental property with a friend in an effort to save money; and
- he concluded that moving into the rental unit is the smaller rental unit is the most economically feasible solution.

The Tenant stated that:

- he believes that the Landlord intends to move into the rental unit;
- prior to being served with the Notice to End Tenancy the Landlord told him he was considering getting a roommate and renting space in the upper portion of the complex for short term rentals;
- if the Landlord had told him he eventually wanted to move into the rental unit he would not have agreed to increase the rent to \$950.00 on March 01, 2018.

The Landlord stated that:

- when this tenancy began the Tenant was advised that he could store personal property in a storage area that can only be accessed through the rental unit;
- the Tenant was told that he could not touch the personal property in that that area that belonged to the Landlord and/or his family;
- at some point the Tenant removed most of the Landlord's personal property from that area;
- he did not learn the Landlord's property had been removed from this storage area until several months ago;
- the Tenant was allowed to store his bicycle in the garage on the residential property;
- items in the garage that belong to the Landlord and his family have been moved by the Tenant;
- he needs full use of all the storage facilities on the residential property; and
- his desire to use this storage area is not the primary reason for ending this tenancy.

The Tenant stated that:

- he moved the Landlord's personal property from this storage area after he was informed the residential complex was being sold; and
- he believes the Landlord is ending his tenancy, in part, because he wants full use of the storage area that can only be accessed through the rental unit.

### Analysis

Section 49(3) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. On the basis of the undisputed evidence I find that the Landlord served the Tenant with a Two Month Notice to End Tenancy in September of 2018, in which the Landlord informed the Tenant he was ending the tenancy pursuant to section 49(3) of the *Act*.

I find that the Landlord's testimony that he intends to move into the rental unit was forthright and consistent. I find that his testimony has the ring of truth to it and I have no reason to conclude that he does not, in good faith, intend to move into the rental unit. In reaching this conclusion I was influenced, in part, by the Tenant's testimony that he also believes the Landlord intends to move into the rental unit.

In adjudicating this matter I have considered the undisputed evidence that the Landlord is also ending the tenancy, in part, because he wishes to have full use of the storage facility that can be accessed through the rental unit. I find that this evidence supports the Landlord's submission that he wishes to move into the rental unit.

Good faith is a legal concept which means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no ulterior motive, intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. In these circumstances I find that no evidence has been submitted that causes me to conclude that the Landlord is not acting in good faith and that he does not honestly intend to move into the rental unit.

As I am satisfied the Landlord intends to move into the rental unit, I find that he has grounds to end this tenancy pursuant to section 49(3) of the *Act*. As I have determined that the Landlord has grounds to end this tenancy pursuant to section 49(3) of the *Act*, I dismiss the Tenant's application to set aside the Two Month Notice to End Tenancy.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In these circumstances I am unable to conclude that the Two Month Notice to End Tenancy that is the subject of these proceedings complies with section 52 of the *Act*, as the Landlord did not submit a copy of that Notice in evidence. Although the Tenant submitted a copy of the Notice to End Tenancy in evidence, the Landlord stated that it was not served to him. As the Landlord did not acknowledge being served with this document as evidence for these proceedings, I did not accept that document as evidence. As the document was not accepted as evidence I could not examine it for the purposes of confirming that it complied with section 52 of the *Act*.

As I have been unable to determine if the Two Month Notice to End Tenancy that is the subject of these proceedings complies with section 52 of the *Act*, I am unable to grant the Landlord an Order of Possession pursuant to section 55(1) of the *Act*.

I find that the Tenant has failed to establish the merits of his Application for Dispute Resolution and I therefore dismiss his application to recover the fee for filing fee this Application for Dispute Resolution.

The Landlord and the Tenant are hereby advised of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

### Conclusion

The Tenant's application to set aside the Two Month Notice to End Tenancy is dismissed. The Two Month Notice to End Tenancy remains in full force and effect and the Tenant is obligated to vacate the unit on the basis of that Notice.

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: November 16, 2018

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Residential Tenancy Branch