



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, ERP, LRE, OLC, RP, FFT

### Introduction

On December 15, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking emergency repairs pursuant to Section 62 of the *Act*, seeking to set conditions on the Landlord's right to enter pursuant to Section 70 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking a repair order pursuant to Section 32 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant and Landlord attended the hearing and T.S. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant confirmed that she served the Landlord the Notice of Hearing package by registered mail on December 21, 2018 and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant submitted a monetary order worksheet with a request for compensation from the Landlord; however, she did not amend her Application with the Residential Tenancy Branch. As such, this amendment has been dismissed with leave to reapply.

The Tenant confirmed that she served the Landlord her evidence by posting it to his door on January 13, 2019 and that his son opened the door immediately and took it. The Landlord confirmed receipt of this package. Based on this undisputed testimony, I

am satisfied that the Tenant's evidence was served to the Landlord in accordance with Rule 3.14 of the Rules of Procedure. Thus, this evidence was accepted and considered when rendering this decision.

The Landlord confirmed that he did not submit any evidence for consideration as he had been experiencing health issues.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, that her other claims would be dismissed, and that the Tenant is at liberty to apply for these new claims under a new and separate Application.

As well, it was also discussed that the claims that the Tenant was asking of the Landlord had already been dealt with in previous hearings between the parties (the related file numbers are on the first page of this decision). As the parties had already been explained that these matters were heard prior to this hearing and that the Landlord had already been ordered to correct these issues, the legal principle of *res judicata* applies, which prevents the same claims from being heard again.

I note that Section 55 of the *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 complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?

- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on or around January or February of 2012 and that the Landlord purchased the rental unit in May 2017. Rent was established at \$880.00 per month, due on the first day of each month. A security deposit of \$375.00 was also paid.

The Landlord stated that the Notice was taped to the Tenant's door on November 30, 2018. The reason the Landlord served the Notice is because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The Tenant advised that she received the Notice on December 1, 2018 and subsequently made her Application to cancel the Notice. The effective date of the Notice was February 1, 2019.

The Landlord advised that he wants the rental unit so that his son can move in and occupy it. He stated that his whole family was evicted from the property that they rented and they vacated that property on October 1, 2018. The rental unit is half a duplex, and the Landlord and his family moved into the other half of the duplex. However, their half was approximately 600 square feet and they came from a 1300 square foot property. As a result, their half of the property was too small, and they would like to occupy the rental unit as well to give them a more reasonable living space.

The Tenant advised that the Landlord served this Notice in bad faith in an attempt to avoid complying with the previous decisions and repair orders issued against him. She stated that the Landlord has still not complied with those previous decisions and repair orders to date. She also referenced evidence that she submitted which shows that the Landlord had posted the rental unit for sale but had the advertisement removed on December 5, 2018, after the Notice had already been served. As well, she advised that she has applied to the Residential Tenancy Branch to have Administrative penalties

levied against the Landlord for this repeated non-compliance with the *Act* that she considers to be harassment.

The Landlord stated that his original plan was to sell the property but he had financial difficulties, so he decided against it. He advised that the real estate agent “took a few days to remove the listing”.

Neither party provided a copy of the Notice. In accordance with Rule 3.19 of the Rules of Procedure, an Arbitrator may provide direction on requesting late evidence. A copy of the Two Month Notice to End Tenancy for Landlord’s Use of Property that is the subject of this dispute was requested to be provided by both parties as it is essential to the matter at hand. The Landlord provided me with a copy of this Notice that is in dispute by uploading it into the Service Portal after the hearing concluded.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlord’s right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

When reviewing the totality of the evidence before me, I find it important to note that the Landlord had previously served the Tenant a Two Month Notice to End Tenancy for Landlord’s Use of Property on July 30, 2018 that was disputed by the Tenant. That notice was cancelled in the October 4, 2018 hearing because it was determined that it was not served in good faith.

Consequently, the Landlord served this new Notice on November 30, 2018 for the same reason. However, in this hearing, the Landlord advised that it was originally his intention

to sell the property but then experienced financial difficulties, so he changed his mind. As such, it was the real estate agent's fault for taking the posting down late. However, the first notice was served in July 2018 for the same purpose of occupying the rental unit for his own use. If the Landlord's original intent was to sell the property but changed his mind, the notice of July 2018 would indicate that this change of intention would have occurred prior to service of the notice in July 2018. However, the Landlord stated that the real estate agent took a few days to remove the listing. If this were in fact true, it is not clear to me why the listing was removed on December 5, 2018, at least five months after the Landlord allegedly changed his mind about selling the rental unit.

I find that the Landlord's inconsistent, contradictory, and dubious nature of his testimony causes me to doubt his credibility on the whole. Moreover, I do not find that the Landlord has provided sufficient or compelling evidence to persuade me that the Notice was issued in good faith for the reason stipulated on the Notice. Based on the pattern of behaviour and actions of the Landlord, I find it more likely than not that this Notice was another attempt at avoiding his obligations of complying with past decisions and Orders of the Residential Tenancy Branch. As such, I am not satisfied, on a balance of probabilities, of the validity of the Notice. Ultimately, I find that the Notice of November 30, 2018 is of no force and effect.

As this is the second Two Month Notice to End Tenancy for Landlord's Use of Property that the Landlord has served that has been determined to be issued not in good faith, the Landlord is put on notice that continuation of such actions will result in investigation by the Compliance and Enforcement Unit of the Residential Tenancy Branch. In addition, Administrative Penalties may also be levied if warranted.

As the Tenant was successful in this application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. As such, I grant the Tenant a Monetary Order in the amount of **\$100.00**.

### Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of November 30, 2018 to be cancelled and of no force or effect.

The Tenant is provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 31, 2019

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Residential Tenancy Branch