



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RA-AN ENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      AAT, CNL, ERP, LAT, LRE, MNDCT, OLC, RP, RR, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for an order to allow access for the Tenant or their guests, for an order for the Landlord to complete emergency repairs, for authorization to change the locks, to restrict or suspend the Landlord’s right to enter, for monetary compensation, for an order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* and/or tenancy agreement, for an order for the Landlord to complete regular repairs, for a reduction in rent due to repairs, services or facilities not provided, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

On April 11, 2019, the Tenant submitted an amendment to add a claim to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”).

The Tenant and two agents for the Landlord (the “Landlord”) were present for the teleconference hearing and were affirmed to be truthful in their testimony. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence, except for a Monetary Order Worksheet regarding the Tenant’s monetary claims. The Landlord also confirmed receipt of the amendment and that they were aware that the Tenant was disputing the Two Month Notice. As such, I find that the Landlord was duly served as required. As for the evidence the Landlord did not receive, as stated below the monetary claims of the Tenant were dismissed and therefore the missing evidence was not relevant for this hearing.

The Landlord did not submit any evidence prior to the hearing.

### Preliminary Matters

As stated by rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, claims on an application must be related to each other and unrelated claims may be dismissed. Due to the time scheduled for the teleconference hearing and the urgent nature of a dispute over a Two Month Notice and a claim for emergency repairs, the hearing continued regarding these two claims only. I exercise my discretion to dismiss the remainder of the Tenant's claims, with leave to reapply. This does not extend any applicable timelines under the *Act*.

### Issues to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use of Property be cancelled?

If the Two Month Notice to End Tenancy for Landlord's Use of Property is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to complete emergency repairs?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the following details of the tenancy: The tenancy began on February 1, 2006. A security deposit of \$202.50 was paid at the outset of the tenancy. Current monthly rent is \$464.30.

The Landlord stated that rent is due on the last day of the month, while the Tenant stated that rent was due on the first day of the month until December 2018 when the Landlord began requesting rent on the last day of each month.

The Landlord stated that they served the Tenant with a Two Month Notice on March 22, 2019 by registered mail. The Tenant confirmed receipt of the Two Month Notice on March 27, 2019.

The Two Month Notice was submitted into evidence by the Tenant and states the following as the reason for ending the tenancy:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent of child of that individual's spouse)

The effective end of tenancy date of the Two Month Notice was stated as May 31, 2019.

The Landlord testified that one of them will be moving into the rental unit after the completion of some renovations. They further stated that they are unsure of the exact timeline as they first need to find out what renovations are needed.

The Landlord stated that they are a family corporation with all voting shares within their immediate family. They stated that the arrangement was for the Tenant to not pay rent for May 2019 as compensation for the Two Month Notice. The Landlord further stated that there is currently only one empty unit in the building, but they have a tenant moving in at the end of May 2019. The Landlord also testified that the Tenant has been very difficult, and they need the tenancy to end.

The Tenant stated her belief that the Two Month Notice was not issued in good faith. She stated that there are currently six empty suites in the building, including an identical unit next door. She also noted that there is a sign out front indicating that there is vacancy, although she was not offered another unit in the building. The Tenant submitted an advertisement for a room rental in the building showing that it was active as of April 10, 2019.

The Tenant has also applied for emergency repairs. She stated that the flooring in the bathroom has cracked and that there is concern for asbestos underneath. She stated that water is leaking through the cracks. The Tenant also testified that the pipe under the sink is leaking causing the cupboards to rot. She stated that there is a hole in the kitchen sink which is causing leaks and that there were rats under the kitchen sink. The Tenant also submitted three photos into evidence.

The Tenant stated that she notified the Landlord verbally about the need for repairs, but more recently has begun to put her repair requests into writing. The Tenant stated that the first letter was sent in September 2017 or September 2018 and another letter sent

on December 7, 2018. She stated that the Landlord responded to this letter which confirms that it was received. The Tenant submitted a copy of the Landlord's response letter dated December 13, 2018.

The Landlord stated that this is the first time they have heard of any concern regarding water leaks or the presence of rats. They stated that the Tenant does not allow them access to the rental unit, so it is difficult to investigate any repairs that may be needed. They stated that they have not provided written notice to enter as they were advised to wait until the hearing had occurred. The Tenant stated that she has not denied access to her rental unit and that she has not received written notice to enter the rental unit.

### Analysis

The Two Month Notice, dated March 22, 2019, was served to the Tenant pursuant to Section 49(4) of the *Act*. As stated in Section 49(8)(a), a tenant has 15 days in which to dispute the notice.

As the Tenant received the Two Month Notice on March 27, 2019 and she filed an amendment to dispute the notice on April 11, 2019, I find that she applied within the 15 days allowable. Therefore, the matter before me is whether the Two Month Notice is valid. As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The Landlord in this matter is a corporation and the agents provided testimony that it is a family corporation. Section 49(1) of the *Act* provides a definition for family corporation as follows:

**"family corporation"** means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

While the Landlord testified that it is a family corporation, they did not provide any evidence that would establish that the voting shares are owned by an individual or by close family members only. As such, I am not satisfied that the Landlord has established that this is a family corporation for which a notice to end tenancy for landlord's use of the property may be issued.

The Tenant has also questioned the good faith intentions of the Landlord in issuing the Two Month Notice. As stated in *Residential Tenancy Policy Guideline 2: Ending a Tenants: Landlord's Use of Property*, good faith means that the party is acting honestly when stating their intent to use the property for their own use. This policy guideline further notes that when this issue is raised, it is up to the landlord to establish that they are acting in good faith.

As mentioned, the Landlord did not submit any documentary evidence to support their testimony. While they provided testimony that they intend to occupy the rental unit, they also provided testimony that the Tenant is difficult, and therefore the tenancy needs to end. Based on this conflicting testimony and in the absence of sufficient evidence to establish the Landlord's plans to move into the rental unit, I do not find that the Landlord has met the burden of proof to determine that the Two Month Notice was issued in good faith. As stated, the Landlord has also not met the burden of proof to establish that they are a family corporation who may issue a Two Month Notice under Section 49(4) of the *Act*.

Therefore, I find that the Two Month Notice dated March 22, 2019 is invalid. The notice is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As for the Tenant's claims for emergency repairs, Section 33(1) of the *Act* defines emergency repairs as the following:

- 33 (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
  - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
  - (c) made for the purpose of repairing
    - (i) major leaks in pipes or the roof,
    - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
    - (iii) the primary heating system,
    - (iv) damaged or defective locks that give access to a rental unit,
    - (v) the electrical systems, or
    - (vi) in prescribed circumstances, a rental unit or residential property.

While the Tenant testified as to repair issues in the rental unit, I do not find that any of the issues mentioned fit the definition of an emergency repair as defined above. The Tenant's testimony regarding repairs did not indicate that there are urgent repairs required that are necessary for the health or safety of the occupants or the property. As such, I dismiss the Tenant's request for emergency repairs, without leave to reapply.

As the Tenant was successful with her application to dispute the Two Month Notice, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenant may deduct this amount from the next monthly rent payment.

### Conclusion

The Two Month Notice dated March 22, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Tenant's claim for emergency repairs is dismissed, without leave to reapply.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 from the next monthly rent payment to recover the filing fee paid for the Application for Dispute Resolution.

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: April 30, 2019

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Residential Tenancy Branch