



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, MNDCT, FFT

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") dated March 24, 2019; and, a Monetary Order for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, the landlord has several witnesses present. The witnesses were excluded with instruction to wait to be called to testify. For reasons set out below, it was unnecessary to call the witnesses.

I confirmed that the parties had exchanged their respective hearing documents and evidence.

### Preliminary and Procedural Matters

The landlord requested that I deal with the enforceability of a 10 Day Notice to End Tenancy for Unpaid Rent she served upon the tenant with respect to unpaid rent for April 2019. The landlord explained that she has already been provided an Order of Possession under the Direct Request procedure but that its enforceability was suspended pending a review hearing that is set for June 10, 2019.

The landlord also requested that I deal with events that transpired after issuance of the 2 Month Notice that the landlord asserted were aggressive and have caused the landlord's son and daughter-in-law to reconsider moving into the rental unit. The landlord also stated that she no longer feels safe while the tenant remains in possession of the rental unit.

I informed the parties that I am required to resolve the issues raised in the Application before me. This is provided in section 58(2) of the Act. The Order of Possession already provided to the landlord for unpaid rent has been suspended pending a review hearing pursuant to a decision made by a different Arbitrator for a different Application and I am not at liberty to interfere with that decision. Nor, did the tenant request that I amend his Application to request that I deal with a 10 Day Notice. Accordingly, I find the enforceability of a 10 Day Notice issued in April 2019 is not before me. Also, the landlord alluded to having a basis for ending the tenancy for cause; however, there was no 1 Month Notice to End tenancy for Cause before me to decide upon. I also informed the landlord that should the landlord succeed in establishing the tenancy should end for landlord's use I would likely provide her with an Order of Possession effective May 31, 2019 which is sooner than the review hearing.

The tenant's advocate interjected by stating the tenant was withdrawing his Application to dispute the 2 Month Notice; that he was accepting the end of tenancy based on the 2 Month Notice; and, the tenant would be vacating the rental unit by the effective date of the 2 Month Notice on May 31, 2019. The tenant had no objection to the landlord obtaining an Order of Possession effective at 1:00 p.m. on May 31, 2019. The tenant stated that he has withheld rent for May 2019 as compensation for receiving the 2 Month Notice. The landlord confirmed that the tenant has withheld rent for May 2019.

The landlord responded by stating she was not agreeable to ending the tenancy based on the 2 Month Notice and that she was withdrawing the 2 Month Notice. The tenant responded by stating he was not consenting to the withdrawal of the 2 Month Notice.

I informed the landlord that withdrawal of a Notice to End Tenancy requires the consent of both the landlord and the tenant. This is in keeping with Residential Tenancy Policy 11: *Amendment and Withdrawal of Notices* which provides, in part:

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

The landlord argued that the 2 Month Notice would be of no effect if the 10 Day Notice issued for April 2019 for unpaid rent were upheld. I rejected the landlord's position since a Notice to End Tenancy is a legally enforceable document that carries rights and

obligations with it and that issuance of one Notice to End Tenancy does not cancel another Notice to End Tenancy or cause it to become invalid. Rather, a Notice to End Tenancy may be unenforceable where it is successfully disputed or withdrawn by mutual consent or otherwise unenforceable due to the insufficient or defective form and content.

The landlord indicated that the stated purpose on the 2 Month Notice may not be fulfilled. I declined to pursue that issue further since that is anticipatory at this time and the tenant's entitlement to further compensation under section 55(2) would be a matter to argue at a future hearing if the tenant makes such a claim.

Upon review of the 2 Month Notice, I find it is in the approved form and was duly completed by the landlord.

Since the tenant did not consent to withdrawal of the 2 Month Notice and the tenant did not wish to proceed to dispute it, I dismiss the tenant's request to cancel the 2 Month Notice. Therefore, I find the landlord entitled to an Order of Possession pursuant to section 55(1) of the Act and I provide the landlord an Order of Possession effective at 1:00 p.m. on May 31, 2019.

The tenant also made a monetary claim against the landlord in this application in the amount of \$2,500.00. The details of dispute indicate this amount pertains to multiple issues including aggravated damages, loss of quiet enjoyment, and issuance of three eviction notices, among other things. However, the Monetary Order worksheet that accompanied the Application indicated \$2,500.00 was for aggravated damages only. In speaking with the tenant's agent the agent indicated \$2,500.00 was calculated as \$500.00 for five eviction notices. The landlord's agent confirmed that such a calculation was not provided in the tenant's submissions.

Where a party makes a monetary claim against the other party, section 59 of the Act requires that the applicant must provide the full particulars of the claim and Rule 2.5 and 3.1 of the Rules of Procedure require the applicant to provide a detailed monetary calculation. These requirements are in keeping with the principles of natural justice so that the respondent understands the claims being made against them and the opportunity to respond to those claims. I find the tenant's monetary claim was not sufficiently set out and did not include a detailed calculation. Also of consideration is that the primary issue of this application pertained to a Notice to End Tenancy, and an Arbitrator has discretion to sever an application under rule 2.3 of the Rules of Procedure where multiple issues are raised in a single application. Given the monetary claim was

insufficiently set out and not entirely related to the primary matter of this application, I severed the monetary claim from the Application and dismissed it with leave to reapply.

The landlord argued that the tenant should not be given leave to reapply since the tenant had made a monetary claim previously and that claim was dismissed without leave in December 2018. Since the tenant's monetary claim was not sufficiently set out, and may include more contemporary claims, I was not prepared to make a finding that the tenant's monetary claims have already been heard and decided upon. Rather, I grant the tenant leave to reapply for monetary compensation and the landlord is at liberty to argue *res judicata* if the tenant makes a claim that has already been heard and decided upon.

Since the tenant withdrew his request to dispute the 2 Month Notice, I deny the tenant's request to recover the filing fee from the landlord.

### Conclusion

The tenant withdrew his request to cancel the 2 Month Notice and I dismiss his application to cancel it. The landlord did provide an Order of Possession effective at 1:00 p.m. on May 31, 2019.

The tenant's monetary claim is dismissed with leave to reapply.

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: May 24, 2019

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Residential Tenancy Branch