



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNQ FFT LRE MNDCT OLC PSF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, during which I determined that the notice to end the tenancy given by the landlord is a dual purpose document: Two Month Notice to End Tenancy for Landlord's Use of Property; and Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit. I found that the tenant merely checked off the incorrect box on the Application for Dispute Resolution, and landlord's use of property is the intended application.

At the commencement of the hearing the tenant advised that he has vacated the rental unit, and as such, withdraws all claims except the monetary claim and to recover the filing fee.

The landlord submitted that the *Residential Tenancy Act* does not apply because a tenancy did not exist, and the rental unit was not meant for a tenancy because it does not contain a kitchen, and tenants were to share the kitchen with the landlord.

The parties each gave affirmed testimony and were given the opportunity to question each other and make submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the Residential Tenancy Branch does not have jurisdiction with respect to the tenancy relationship between the parties?
- If the Residential Tenancy Branch has jurisdiction to hear and decide on the merits, has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of rent and compensation as required under Section 51(1) after service of a notice to end the tenancy for landlord's use of property?

### Background and Evidence

**The tenant** testified that this tenancy began in April or May, 2016 and the tenant vacated the rental unit on May 17, 2019. Rent in the amount of \$700.00 per month was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. Rent was paid to the end of May, 2019. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$250.00 which was returned to the tenant in full.

There was no written tenancy agreement, and the tenant testified he was not okay with that but didn't say anything about it. The rental unit had a separate entrance from the landlord's unit in the upper level. The rental unit included 1 bedroom, a bathroom and shared laundry with the landlord. There was no stove or oven, but a fridge, hot plate, microwave oven and a counter. A door separated the upper unit from the rental unit, and was kept locked on the upper side. Photographs have also been provided as evidence for this hearing, as well as numerous emails including an initial string

commencing on March 30, 2016. The initial string begins with an email from the landlord stating that a private partial suite, with a living and kitchen area as a “room rental” only because it has no stove. It also states that if the tenant is a baker, it would not be suitable, unless the parties arranged for the tenant to use the landlord’s kitchen sometimes. Another email from the tenant states that he was okay with a partial suite and would not be cooking a lot because he eats raw foods most of the time, uses a blender and is almost vegetarian, but would like to barbeque and use a hot plate.

The tenant further testified that the landlord increased rent from \$650.00 per month to \$700.00 per month effective May 1, 2018 without giving a notice in the approved form. The tenant claims \$50.00 per month for 12 months.

The landlord and her husband attended at the rental unit and the landlord told the tenant that she had to give notice to end the tenancy. On April 28 or 29, 2019 the tenant found a Two Month Notice to End Tenancy for Landlord’s Use of Property on the stairway. Copies of the first 2 of 3 pages have been provided for this hearing and it is dated April 28, 2019 and contains an effective date of vacancy of July 31, 2019. The reason for issuing it states: “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).” After the tenant received it, the tenant sent the landlord a text message stating that the tenant would be moving out earlier, on May 13 or 14, 2019. However, the tenant disputed it in this Application for Dispute Resolution, but the landlord made it uncomfortable for the tenant to stay, which included loss of Wifi for 3 days.

The landlord did not give the tenant the equivalent of 1 month of rent as required by the Act, and the tenant claims \$700.00.

The tenant seeks monetary compensation totalling \$1,100.00, being \$700.00 as required after service of a Two Month Notice to End Tenancy for Landlord’s Use of Property, \$300.00 for the overpayment of rent due to an illegal rent increase, and recovery of the \$100.00 filing fee.

**The landlord** testified that the agreement was meant as a room rental, not a tenancy. The landlord provided a bedroom and living room space, a bathroom, but not a kitchen, and tried to make a room rental more private. For the last 8 years the landlord has rented to a mixture of tenants: students, sheltered women, a teacher, who all shared the landlord’s kitchen. Some students chose to just use the hotplate however this tenant chose to not use the kitchen, although it was available to him. There is no written tenancy agreement because it was not intended as such.

With respect to the rental increase, the landlord testified that in March, 2018 the landlord verbalized a necessity to increase rent, and then left a hand-written note for the tenant. A copy has been provided and it states: "As the costs of living are constantly climbing, as of May 1<sup>st</sup>, 2018 I will be raising rent from 600 up to 650." The tenant didn't disagree, but instead started to pay \$700.00 per month effective in April, 2018.

On April 28, 2019 the landlord gave notice to the tenant that the landlord would like the tenant to move on, requiring the rental space for the landlord's new husband. The landlord was willing to give the tenant until the end of July, 2019 because the tenant had a dog. The tenant behaved strangely, so the landlord printed off an actual Two Month Notice to End Tenancy for Landlord's Use of Property so that the tenant had it in writing. The tenant responded by way of text message stating that he had received the Notice. On May 16, 2019 the tenant texted the landlord stating he would be moving out in the next couple of days.

### Analysis

Firstly, the Residential Tenancy Branch has jurisdiction to hear and decide on disputes arising out of a tenancy under the *Residential Tenancy Act*. However, the *Residential Tenancy Act* does not apply to living accommodated in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

I accept that the landlord has rented in the past, and as with this tenancy, did not intend for the parties to enter into a traditional or prescribed tenancy agreement because the rental unit did not have its own complete kitchen, i.e.: no stove. However, the triggering event was the exchange of emails in March, 2016 wherein the tenant advised the landlord that a hot plate would be fine, and the tenant did not require a stove. That ought to have notified the landlord that a tenancy would be created. The tenant, even though by his own choice, did not share kitchen or bathroom facilities with the owner. The *Act* also specifies that a tenancy agreement is created by the verbal or written agreement of the parties, and I find that the *Residential Tenancy Act* applies and the Residential Tenancy Branch has jurisdiction.

I have reviewed all of the evidentiary material of the parties, and I find that the tenant deliberately chose to not testify as to how the rent increased. He testified that the landlord raised the rent from \$650.00 per month to \$700.00 per month, but the note from the landlord clearly states that rent was being increased from \$600.00 per month to \$650.00 per month. I find that the increase was at his own doing, and the landlord

did not increase rent contrary to the *Residential Tenancy Act* and the regulations. I dismiss the tenant's application for monetary compensation for overpayment of rent.

Having found that the *Residential Tenancy Act* applies, a landlord who gives a Two Month Notice to End Tenancy for Landlord's Use of Property must provide the tenant with compensation equivalent to 1 month of rent. A tenant may give 10 days written notice to vacate a rental unit earlier than the effective date of the landlord's notice, and the tenant must pay rent to the effective date of the tenant's notice and the landlord is still required to provide the compensation.

In this case, the landlord gave the Two Month Notice to End Tenancy for Landlord's Use of Property on April 28, 2019, effective on July 31, 2019. The tenant moved out of the rental unit on May 17, 2019, having paid rent to the end of that month. The landlord testified that the tenant notified the landlord on May 16, 2019 that he would vacate earlier, but an email or text message does not qualify as written notice. The landlord did not give the required compensation, and I find that the tenant has established a claim of \$700.00.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$800.00.

This order is final and binding and may be enforced.

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: July 04, 2019

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Residential Tenancy Branch