



# 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 dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated May 1, 2019 ("2 Month Notice"), pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 25 minutes. The two landlords, "male landlord" and female landlord ("landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The male landlord did not testify at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and amendment. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and amendment.

The landlord stated that she posted a copy of the landlords' written evidence package to the tenant's door on June 23, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' evidence on June 26, 2019, three days after its posting.

The landlord testified that the tenant was served with the landlords' 2 Month Notice on May 1, 2019, by way of posting to his rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 2 Month

Notice on May 4, 2019, three days after its posting. The tenant indicated that he received the notice on May 1, 2019 in person, when he applied to cancel the notice in this application.

### Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 2 Month Notice, the landlords are entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

### Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on September 1, 2016. Monthly rent in the current amount of \$789.00 is payable on the 31<sup>st</sup> day of each month. A security deposit of \$375.00 and a pet damage deposit of \$375.00 were paid by the tenant and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlords seek an order of possession based on the 2 Month Notice. Neither party provided a copy of the 2 Month Notice for this hearing. The landlord stated that the notice indicated a date of May 1, 2019, an effective move-out date of June 30, 2019, and the reason was for the landlord to move a close family member in to the unit. The landlord testified that her granddaughter and sister would be moving into the rental unit as of July 5, 2019, and that when her daughter sells her home, she would be moving in and probably living on her own.

### Analysis

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant was deemed to have received the notice. The tenant was deemed to have received the 2 Month Notice on May 4, 2019, and filed his application to dispute it on May 22, 2019. Therefore, he was not within the fifteen day time limit to dispute the 2 Month Notice. He did not apply for an extension of time to dispute the notice. He did not appear at this hearing to present his submissions.

Section 49(3) of the *Act* states that a landlord may only end a tenancy if the landlord intends, in good faith, to have a close family member occupy the rental unit. A close family member is defined in section 49 of the *Act* as a parent, spouse or child of the landlord. In this case, the landlord intends to move in her granddaughter and sister first. These people do not meet the definition of a close family member. Further, the landlord only intends to move in her daughter if she is able to sell her home.

For the above reasons and on a balance of probabilities, I find that the landlords provided insufficient evidence that they intend to move a close family member in to the rental unit. Therefore, I find that the landlords did not issue the 2 Month Notice for a valid reason.

The landlords are not entitled to an order of possession. The landlords' 2 Month Notice, dated May 1, 2019, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlords are not entitled to an order of possession. The landlords' 2 Month Notice, dated May 1, 2019, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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