



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Although the Notice of Hearing identified July 30, 2019, as the scheduled date for this hearing, there had been a scheduling error committed by the Residential Tenancy Branch for that date. With the agreement of the parties on July 30, 2019, they both confirmed that they could participate in the properly scheduled date and time for this hearing, at 9:30 a.m. on August 1, 2019.

At the commencement of the hearing, I asked to confirm the spelling of the landlord's name, which as it turned out was misspelled in the tenant's application. I have made this change accordingly.

As the tenant confirmed that they received the 2 Month Notice posted on the tenant's door by the landlord on May 28, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on June 21, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Although the tenant said that the landlord was a day late in providing them a copy of their written evidence, the tenant

confirmed that they had read the landlord's written evidence and were prepared to proceed with the hearing of their application to cancel the 2 Month Notice. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

### Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This tenancy began in January or February 2012, with a previous owner of this property. The rental unit is a two bedroom suite in one of three rental units in this duplex. The landlord purchased this property in May 2017. Monthly rent for this rental unit would normally be \$880.00, payable in advance by the first of each month.

As a result of a series of decisions of arbitrators appointed pursuant to the *Act* (see above), including the decision of October 16, 2017, the tenant has been authorized to withhold rent until such time as the landlord complies with repair orders issued by the Residential Tenancy Branch (the RTB). The tenant maintains that these repairs are still outstanding; the landlord maintains that these repairs have been completed. The tenant gave undisputed sworn testimony that they posted information on the landlord's door advising the landlord how the landlord could apply for an order if the landlord believes that the required repairs have been completed. The tenant said that, with one exception when the landlord attempted to bring sub-standard appliances to the rental unit, the tenant has allowed the landlord or the landlord's repair people access to the rental unit to complete the repairs the landlord is obligated to undertake. At the hearing, the landlord testified that they have not yet applied for a determination by an arbitrator appointed pursuant to the *Act* as to whether the required repairs have been completed. The landlord said they intended to initiate this application process shortly after the completion of this hearing.

The landlord's 2 Month Notice, entered into written evidence by the tenant, identified the following reasons for seeking an end to this tenancy by August 1, 2019:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

In the landlord's written evidence and as confirmed with sworn testimony at this hearing, the landlord wants this tenancy to end so that their 23 year old son, who acted as the landlord's advocate/translator/witness at this hearing can move into this rental suite. The landlord and the landlord's son testified that the son has been paying \$500.00 in rent to the landlord, and helps the landlord out with utilities in the family home where the landlord's family currently live. The landlord and the landlord's son said that their existing residence is too small for the family, and does not allow the landlord's son privacy. The landlord's son has a female friend who would like to spend more time with the landlord's son, which is difficult under their current shared living space with the landlord and the landlord's family. The landlord's son said that it would be difficult for them to find equivalent rental accommodation elsewhere. The landlord supplied photographs to confirm that their living space is so small that many of their possessions remain in boxes.

The tenant questioned the landlord's good faith in issuing this 2 Month Notice. The tenant noted that since the landlord purchased this property, there have been many attempts by the landlord to end this tenancy, some for unpaid rent, some for cause, and, in particular at least two previous and relatively recent attempts to end this tenancy on the basis of 2 Month Notices. The tenant also referenced a series of decisions, including those issued:

- on April 27, 2017, in which repairs to this rental suite were to have been completed by May 30, 2017;
- on October 16, 2017, in which this landlord was ordered to complete repairs, and in which an escalating level of rent reductions were allowed until such time as these repairs were completed; and
- on August 9, 2018 in which he parties agreed to the landlord's completion of repairs and emergency repairs.

In addition to the tenant's assertion that the landlord has not completed these repairs, the tenant has applied for consideration of the issuance of monetary awards against the landlord a number of times, including most recently at a June 24, 2019 hearing of their application. While this most recent application for a monetary award was dismissed, the tenant gave undisputed sworn testimony and written evidence that the landlord has neither applied for nor obtained an order from the RTB allowing the landlord to resume

charging monthly rent for this rental unit. The tenant asserted that the underlying reason for the landlord's refusal to complete repairs and to attempt to end this tenancy for whatever reasons possible is that the tenant's scheduled \$880.00 in monthly rent is far below what the landlord is receiving from a tenant for a similarly sized rental unit in the other part of this duplex. The tenant said that the other tenant is paying \$1,400.00 in monthly rent. The tenant described the landlord's attempts to end this tenancy as a means of obtaining more rent from this part of the rental property.

The 2 Month Notices issued on July 30, 2018 and November 30, 2018, were both set aside by arbitrators appointed pursuant to the *Act*, as not having been issued in good faith (see above references to decisions of October 4, 2018 and January 31, 2019). On December 28, 2017, another arbitrator set aside the landlord's 1 Month Notice to End Tenancy for Cause.

In the January 30, 2019 decision, the arbitrator provided the following findings with respect to the 2 Month Notice that was issued for very similar, and almost identical reasons, as were provided for justification of the current 2 Month Notice before me:

*...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...*

### Analysis

Section 49(3) of the Act establishes the grounds by which " a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit." As the tenant applied to cancel the 2 Month Notice within the time frame established pursuant to section 49 of the Act, the burden of proof rests with the landlord.

*Residential Tenancy Policy Guideline 2A provides the following description of the burden of proof the landlord must meet when a tenant raises concerns about the extent to which the landlord has issued the 2 Month Notice in good faith:*

*...If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy...*

In this case, I must take into consideration that the landlord has attempted at least three times in the past two years, and twice within a seven month period on the basis of 2 Month Notices, to end this tenancy. As was noted above, arbitrators appointed pursuant to the Act have on every occasion allowed the tenant's applications to cancel the landlord's notices to end this tenancy. The landlord's most recent two attempts to end this tenancy on the basis of 2 Month Notices were both set aside because the arbitrators found that the landlord was not acting in good faith.

As noted at the hearing, it is difficult to overlook this extensive recent history of notices to end tenancy issued by the landlords, all of which have been set aside by arbitrators appointed pursuant to the Act. I also must take into account the series of final and binding decisions ordering the landlord to complete repairs to this rental unit, which have led to escalating rent reductions to the point where for some time the tenant has not had to pay any rent to the landlord at all. Nevertheless, this does not necessarily mean that the landlords are not acting in good faith with respect to their current 2 Month Notice.

As I noted during the hearing, assigning responsibility for who is responsible for the delays in having the repairs completed is not before me. However, this issue does have some bearing on the tenant's claim that the landlord is not acting in good faith because the tenant maintained that the landlord is attempting to avoid complying with the repair orders by ending this tenancy for landlord's use of the property. In this regard, I read with interest page 17 of the landlord's written evidence package, a July 21, 2019 statement from the landlord in which the landlord included the following:

*...Too much harassment from T. She shouting and tell us so many bad thing. I knew from that point T was a trouble creator. She made the appliances so mess and dirty with the picture so she claim us for give her dirty appliances. That's why I stop all repair job because this T was very tricky and manipolis planning everything make the situation bad. So she could avoid pay the rent. Stop all my project scheduled with Trade men come to fix. Please understand for us.*

(as in original)

While the full meaning of the landlord's statement is somewhat unclear, it does lend at least some support to the tenant's claim that the landlord held off at least for a period of time the completion of repair work that the landlord was ordered to perform, without authorization to do so.

In considering this matter, I am somewhat sympathetic to the predicament that the landlord's son may truly be facing in his wish to find a rental suite of his own. However, I find that very little has changed in the evidence presented by the landlord from the previous situations where the landlord was unsuccessful in ending this tenancy on the basis of 2 Month Notices. In considering this matter, I attach considerable weight to the fact that the fundamental disagreement as to whether repairs ordered by arbitrators in previous decisions have been completed remains in effect. The landlord has done

nothing as yet to obtain clarity from an arbitrator as to whether the previous orders have been followed to the extent that the landlord can resume collecting monthly rent. When such disputes have not been settled, when a tenant claims that required repairs have not been completed, when a landlord is not receiving any monthly rent from a tenancy, and when a tenant provides undisputed sworn testimony that the adjacent rental suite owned by the landlord is receiving substantially more in monthly rent than the tenant would even be required to pay were the existing repair orders resolved, I find that the tenant has provided ample evidence that the landlord has failed to act in good faith in the issuance of the 2 Month Notice. For these reasons, I allow the tenant's application to set aside the landlord's 2 Month Notice of May 28, 2019, as I find that it was not issued in good faith.

I would be remiss if I did not also note that I am also somewhat troubled by some of the witness statements provided by the tenant. Allegations are made that following confrontational interactions between the landlord and the tenant, the tenant's guests or others whom the tenant knows, actions have been taken by unknown persons that either damaged or had the potential to damage their vehicles. While these are issues that extend beyond my jurisdiction pursuant to the *Act*, these are serious matters that if verified could be taken to authorities better positioned to deal with such concerns.

The current 2 Month Notice was issued by the landlord for essentially the same reasons and under the same circumstances as those that were dismissed less than four months earlier. Little has changed since January 31, 2019, and the landlord has persisted in issuing yet a third 2 Month Notice, despite having been advised in the previous arbitrator's decision, as recently as January 31, 2019, that a continuation of issuing 2 Month Notices could lead to a referral to the RTB's Compliance and Enforcement Unit, which could lead to the levying of Administrative Penalties.

Since the tenant's application has been successful, the tenant is allowed to recover their \$100.00 filing fee from the landlord.

### Conclusion

The tenant's application to cancel the 2 Month Notice is allowed. The 2 Month Notice is set aside and of no force or continuing effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary Order in the tenant's favour in the amount of \$100.00. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 01, 2019

---

Residential Tenancy Branch