



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, LRE, OLC, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 12, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated July 30, 2019;
- an order restricting or suspending the Landlord's right to enter;
- an order that the Landlord comply with the *Act*, tenancy agreement or regulation; and
- an order granting a rent reduction.

The Tenant, the Tenant's witness R.L., the Landlord, and the Landlord's Agent, B.S. attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord by registered mail on July 18, 2019. The Landlord confirmed receipt. The Landlord testified that she served the Tenant with her documentary evidence by registered mail on August 31, 2019. The Landlord stated that the tracking information indicated that the Tenant had not retrieved the mailing. The Landlord stated that she decided to follow up and served the Tenant with a copy of her documentary evidence by placing it in the Tenant's mailbox on September 5, 2019. The Tenant confirmed that she had been out of town, however, confirmed receipt of the Landlord's documentary evidence on September 5, 2019. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is

dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending in relation to the Two Month Notice.

The Tenant's request for an order restricting or suspending the Landlord's right to enter, and an order that the Landlord comply with the *Act*, tenancy agreement or regulation are dismissed with leave to reapply.

### Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated July 30, 2019, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2016. Currently, the Tenant pays rent in the amount of \$1,200.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$600.00 which the Landlord continues to hold. The tenancy is still ongoing.

The Landlord testified that she served the Tenant with three Notices to End Tenancy as she wishes to move into the rental unit which is currently being occupied by the Tenant. The parties testified and agreed that the first two Notices were not in the approved form, which led the Landlord to serve a third Two Month Notice to End Tenancy dated July 30, 2019 with an effective vacancy date of September 30, 2019. The Landlord stated that she served the Two Month Notice to the Tenant by registered mail on August 1, 2019. The Tenant confirmed having received the Two Month Notice on August 3, 2019. The Landlord's reason for ending the tenancy on the Two Month Notice is;

*"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)."*

The Landlord stated that she currently owns the rental property and resides elsewhere. She stated that from time to time she attends the rental property to visit, as she occupies a portion of the basement which consists of a large room. Additionally, the Landlord rents a newly renovated portion of the basement to another occupant and rents the upstairs of the rental property to the Tenant.

The Landlord stated that recently, she has been wishing to stay in her portion of the rental property; however, she is required to use the front door in order to access her room. The Landlord stated that prior to the renovations; she had been using the back door, which is now being used by the new occupant of the newly renovated basement unit. The Landlord stated that she now has to use the front door of the residence, however; she has been met with some resistance from the Tenant about the Landlord using the front door as it allows unsecure access to the stairwell leading to the upstairs rental unit. The Landlord stated that the parties had previously had a verbal agreement that allowed the Landlord to use the front door of the home to access her portion of the rental property. The Landlord stated that she currently does not have the ability to access her portion of the rental property without going through the front door.

The Landlord stated that the parties had a fixed term agreement between them which ended on July 31, 2019. The Landlord stated that prior to the expiry of the fixed term; she tried to have the Tenant enter into a new fixed term agreement which would allow

the Landlord to use the front door of the rental property in order to gain access to her portion of the rental property. The Landlord stated that the Tenant refused to enter into a new agreement; therefore, the Landlord stated that the situation accelerated her plans to retire and move into the rental property, which had been her plan post retirement. The Landlord stated that she retired from her job about a month ago and wishes to take possession of the upstairs of the rental property on the effective date of the Two Month Notice.

In response, the Tenant stated that there is no door between the front door and their rental unit, located at the top of the stairs. The Tenant stated that she never agreed to the Landlord using the front door, furthermore, the Tenant stated that there is no washroom in the Landlord's downstairs portion of the rental property; therefore they would need to also allow the Landlord to use their washroom which they did not consent to. The Tenant stated that the Landlord was also requesting a pet damage deposit as well as requesting more money for rent and utilities. The Tenant stated that she advised the Landlord that fixed term tenancies revert to month to month tenancies thereafter and that she was not interested in entering into a new fixed term tenancy. The Tenant stated that they received the first Notice to End Tenancy from the Landlord by text, one hour after she declined to sign the new agreement. The Tenant submitted a copy of the text message conversation in support.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord served the Tenant in person with the Two Month Notice on August 1, 2019, with an effective vacancy date of September 30, 2019. The Tenant confirmed having received the notice on August 3, 2019. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

In this case, the Landlord stated that recently, she has been wishing to stay in her portion of the rental property; however, she is required to use the front door of the home in order to access her suite. The Landlord stated that she has been met with some resistance from the Tenant about her using the front door as it allows unsecure access

to the stairwell leading to the upstairs rental unit. The Landlord stated that she currently does not have the ability to access her portion of the rental property without going through the front door.

The Landlord stated that prior to the expiry of the fixed term; she tried to have the Tenant enter into a new fixed term agreement which would allow the Landlord to use the front door of the rental property in order to gain access to her portion of the rental property. The Landlord stated that the Tenant refused to enter into a new agreement; therefore, the Landlord stated that the situation accelerated her plans to retire and move into the rental property, which had been her plan post retirement. The Landlord stated that she retired from her job about a month ago and wishes to take possession of the upstairs of the rental property on the effective date of the Two Month Notice.

In contrast, the Tenant stated that there is no door between the front door and their rental unit, located at the top of the stairs. The Tenant stated that the Landlord was requesting the Tenant enter into a new fixed term agreement requesting an increase in rent and utilities, pet damage deposit, as well permit the Landlord access to the front door. The Tenant stated that she advised the Landlord that fixed term tenancies revert to month to month tenancies thereafter and that she was not interested in entering into a new fixed term tenancy. The Tenant stated that they received the first Notice to End Tenancy from the Landlord by text, one hour after she declined to sign the new agreement. The Tenant submitted a copy of the text message conversation in support.

Section 44 of the Act speaks to what can occur at the end of a fixed term tenancy. In this case, the Tenants and the Landlord agreed that the end of the fixed term tenancy would be July 31, 2019. However, on December 11, 2017, the Act was revised and is applied retrospectively to all Tenancy Agreements. The Act was changed to strike out vacate clauses, unless they met certain criteria. In this case, the criteria was not met and the vacate clause was no longer enforceable. In other words, if a fixed term tenancy agreement was in effect and contained a clause that required a tenant to vacate the rental unit on a specified date, that clause is no longer enforceable.

A Landlord and Tenant may agree to renew a fixed term Tenancy Agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms.

In light of the above, the Tenant was not required to agree on a new fixed term tenancy as it continues on a month-to-month basis. I find that the Landlord had been trying to have the Tenant enter into a new fixed term which included several additional conditions that the Tenant did not agree to. I find that the Tenant provided sufficient evidence to demonstrate that after refusing to sign the new fixed term tenancy, that the Landlord issued a Notice to End Tenancy. I find that the Landlord provided insufficient evidence to demonstrate that she intends to occupy the rental unit for her own use.

In light of the above, I cancel the Two Month Notice, dated July 30, 2019. I order the tenancy to continue until ended in accordance with the Act.

As the Tenant has been successful, I find she is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from the next month's rent.

### Conclusion

The Tenant's application is successful. The Two Month Notice issued by the Landlord dated July 30, 2019 is cancelled. The tenancy will continue until ended in accordance with the Act. The Tenant is entitled to deduct \$100.00 from the next month's rent for recovery of the filing fee.

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: September 18, 2019

---

Residential Tenancy Branch