



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL FFT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord attended accompanied by her adult daughter, AK, ("the landlord"). The tenant attended. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. Each party acknowledged receipt of the other party's documents. No issues of service were raised. I find the parties were served in accordance with the Act.

### *Preliminary Issue*

At the outset, the tenant objected to PK representing the landlord. The tenant testified that PK was, to the best of his knowledge, not the landlord of the unit which he rents and further that PK did not have authority to issue the Two Month Notice or represent the landlord at the hearing.

In support of this assertion, the tenant stated that he entered into a tenancy agreement with AK (reference to the full name appearing on the first page), not PK, on May 7, 2013. The tenant submitted the first two pages of an agreement in the RTB form between the tenant and AK whose names appear on the first page.

Twice on the first page, appear the following hand-written statements: "There is no agent. Nobody is working for anybody." Again, on the second page, appear the handwritten statement, "There is no agent". The tenant testified that the writing is that of AK.

On neither page is there reference to PK.

The tenant provided affirmed testimony as follows. His primary contact throughout the tenancy was AK. The tenant contacted AK if any issues arose with respect to maintenance or any other aspect of the tenancy. The tenant provided "a stack" of post-dated cheques for rent to AK from time to time. The rental cheques were made out to AK. The tenant discussed rent increases only with AK; the rent, which was \$1,225.04 at the beginning of the tenancy, is now \$2,020.00.

The parties agreed that PK brought an application to obtain an order of possession pursuant to a Two Month Notice she served upon the tenant two years ago. The parties agreed that PK's application was dismissed.

The tenant testified that he was served with a second Two Month Notice dated July 27, 2019 signed by PK with an effective date of September 30, 2019. The tenant stated he immediately called AK who denied that he had issued the Notice or authorized PK to do so.

In reply, PK stated as follows. She is the agent of AK and received verbal authorization from AK to Issue the Two Month Notice and to act for him in this matter. PK is the wife of AK; a copy of the marriage certificate between the parties was submitted by PK. PK stated that she is the sole owner of the unit, not AK; PK submitted a copy of a Land Titles Certificate which she stated related to the unit. PK testified she was authorized by AK to issue the Two Month Notice and to act for AK during the hearing. PK stated the tenant refused to have contact with her and that is why all his dealings were with AK.

PK provided no letter of authorization or any documentary evidence supporting her verbal testimony. During the hearing, PK attempted to telephone AK so that AK could attend the hearing and provide confirmation that AK has authorized PK to appear on his behalf. PK reported that AK did not respond to the call. A second opportunity was provided to PK close to the end of the 60-minute hearing, but PK declined to attempt again to contact AK.

### Analysis

The Rules of Procedure state that an arbitrator may require an agent to provide proof of his or her appointment to represent a party.

Section 6.8 states as follows:

*6.8 Proof of authority to act*

*The arbitrator may require an agent to provide proof of his or her appointment to represent a party and may adjourn a dispute resolution hearing for this purpose.*

I find the evidence of the tenant believable that he has only dealt with AK on tenancy issues and that he thought AK was his landlord. I accept his evidence that he is genuinely puzzled by the periodic appearance of PK in the tenancy situation for the sole purpose of attempting to end the tenancy.

I find that PK has submitted no documentary evidence to support her assertion that she has authority to act for AK in this matter. I find there is confusion and uncertainty whether AK has authorized PK to appear on his behalf which could be resolved, for example, by the submission of a letter of authorization by AK, signed before a Commissioner of Oaths, or AK's attendance at the hearing..

Without any supporting evidence of authorization that AK has authorized PK to issue the Notice and to attend the hearing on AK's behalf, I will not consider any of the evidence submitted by PK during the hearing.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a Notice to End Tenancy, I explained to the parties that the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the Notice and seeks to end the tenancy.

Because of my findings above, I find the applicant submitted no evidence admissible under the *Act* and Rules of Procedure.

As no evidence was submitted on behalf of the applicant, I order that the tenant's application to cancel the Notice to End Tenancy is granted. I order that the tenancy shall continue until ended in accordance with the agreement and the *Act*.

As the tenant has been successful in the application, I find the tenant is entitled to reimbursement of \$100.00 for the filing fee. I direct the tenant may deduct this amount on a one-time basis only from rent due to the landlord pursuant to section 72.

Conclusion

I order that the Notice to End Tenancy is cancelled. I order that the tenancy continues until it is ended in accordance with the agreement and 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: October 02, 2019

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Residential Tenancy Branch