



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”).

The Tenant and an agent (the “Tenant”) were present for the hearing as was the Landlord and a family member (the “Landlord”). The Tenant also had a witness join during the hearing (the “Witness”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service during the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

### Issues to be Decided

Should the Two Month Notice to End Tenancy for Landlord’s Use of Property be cancelled?

If the Two Month Notice to End Tenancy for Landlord’s Use of Property is upheld, is the Landlord entitled to an Order of Possession?

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began approximately 14 years ago. Current monthly rent is \$625.00, due on the first day of each month. A security deposit of \$300.00 was paid at the start of the tenancy.

The Landlord testified that the Two Month Notice was served to the Tenant in person on August 12, 2019. The Tenant confirmed receipt of the Two Month Notice on August 12, 2019.

A copy of the Two Month Notice was submitted into evidence, dated July 1, 2019. The Landlord provided testimony that she gave verbal notice to the Tenant on July 3, 2019 but did not provide the written notice until August 12, 2019 after the Tenant asked for formal notice. The Landlord stated that she preferred to have a discussion with the Tenant verbally instead of serving an eviction notice.

The reason for ending the tenancy as stated on the Two Month Notice is as follows:

*The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.*

However, I note that 'caretaker' was crossed out and replaced with the word 'caregiver'.

The Landlord testified that she has plans to have a caregiver move into the rental unit to provide care and support to herself due to health issues. She stated that she had someone to move into the rental unit for October 1, 2019 but that fell through due to the Tenant not moving out. The Landlord described the rental unit as adjacent to the area of the residential property where she lives.

The Landlord submitted into evidence a written statement dated October 15, 2019 outlining the events that occurred with service of the Two Month Notice. She also submitted two doctor's notes; one undated which states that the Landlord requires a caregiver and a second note dated October 1, 2019 which states that stress due to the rental dispute is accelerating her medical condition.

The Tenant testified that the Two Month Notice is not valid due to the Landlord changing the reason on the notice and also dating the notice July 1, 2019 but not serving the notice until August 12, 2019. The Tenant also noted that the Landlord

crossed off '2 months' on the notice and changed it to 3 with an effective end of tenancy date of October 1, 2019.

The Tenant's witness also stated their position that the notice is invalid as it is outdated and also references a subsidized rental unit of which this is not. The Witness further stated that the Landlord is not able to use this form to evict a tenant for a caregiver to move in.

The Tenant submitted into evidence a written statement outlining the reasons why the notice is not valid, including a statement that the Landlord has moved a caretaker into another rental unit on the residential property. The Tenant also submitted copies and summaries of correspondence with the Landlord regarding the Two Month Notice.

### Analysis

The parties were in agreement that although the Two Month Notice is dated July 1, 2019, it was not served to the Tenant until August 12, 2019. As stated in Section 49(8)(a) a tenant has 15 days to dispute a Two Month Notice given due to the landlord's use of the rental unit.

As the Tenant applied to dispute the Two Month Notice on August 22, 2019, I find that he applied within 10 days of receipt of the Two Month Notice.

The Landlord served the Two Month Notice due to a caregiver moving into the rental unit, although they checked off the box regarding conversion of the rental unit. However, I note that the Landlord used a form from 2016 which was at a time when the legislation allowed a landlord to provide two months notice to end a tenancy for landlord's use of the property or conversion of the rental unit for use by a caretaker, manager or superintendent of the residential property.

However, following changes to the legislation in May 2018, a landlord may provide a Two Month Notice for landlord's use of property in accordance with Sections 49(3), 49(4) or 49(5) of the *Act* or a Four Month Notice for demolition, renovation or conversion of the rental unit in accordance with Section 49(6) of the *Act*.

Accordingly, I find that the Landlord did not use the current approved form to end the tenancy due to converting the rental unit to another purpose. As stated in Section 49(7) of the *Act*, a notice given under this section must comply with Section 52 of the *Act*

which requires that the notice be in the approved form. As I do not find that the Landlord used the approved form, I do not find that this notice is valid.

However, I also note that the Landlord changed the reason on the notice to end tenancy and do not find that Section 49(6) of the *Act* outlines a provision for ending the tenancy for use by a caregiver. Instead, I recommend that the Landlord speak to an Information Officer at the Residential Tenancy Branch for more information about ending a tenancy under Section 49 of the *Act*.

As such, I find that the Two Month Notice dated July 1, 2019 is invalid as the approved form was not used for the reason stated on the notice. Accordingly, the Tenant's application to cancel the Two Month Notice is successful. The Two Month Notice dated July 1, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

### Conclusion

The Two Month Notice dated July 1, 2019 is cancelled and of no force or effect. This tenancy continues until 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: October 28, 2019

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Residential Tenancy Branch