



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT, MNDCT, OLC

### 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; 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. The landlord was represented by her nephew, the tenant had an interpreter to assist her. The agent confirmed that the landlord had not submitted any documentation for this hearing and that he had received all of the tenant's documentary evidence.

### Preliminary Issue- Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice to End Tenancy. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy and recovery of the filing fee for this application.

### Issues to Decide

Should the Two Month Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to the recovery of the filing fee from the landlord for this application?

### Background and Evidence

The landlord's agent gave the following testimony. The tenancy began on October 15, 2018 with the monthly rent due on the 15<sup>th</sup> of each month. The tenant paid a security deposit of \$1900.00. The agent testified that a Two Month Notice to End Tenancy for Landlords Use of Property was issued to the tenant on August 28, 2019 by posting it on the door and also by serving them by registered mail. The agent testified that the notice was issued for the following reason:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The agent testified that the effective date of the notice was to be October 31, 2019 but the tenants did not want to move out until November 14, 2019. The agent testified that as a result of their refusal the home was not sold and the deal was cancelled. The agent testified that he thinks his aunt wants to move in herself now and seeks an order of possession.

The tenant gave the following testimony. The tenant testified that they did not receive the notice to end tenancy until September 7, 2019. The tenant testified that the potential new owners realtor had offered her a one year lease at \$2000.00 per month clearly

showing that they had no intention of moving in. The tenant wishes to stay until she is able to find alternative housing.

### Analysis

When a landlord issues a notice to end a tenancy, they bear the burden of providing sufficient evidence to support the issuance of the notice. The landlord did not submit any documentation for this hearing. Firstly, as the landlord did not provide documentation or specifics to support as to when and how the notice was served, I accept that the tenant received the notice on September 7, 2019 and filed to dispute it within the fifteen days as required. In addition, the agent testified that the sale of the property is no longer pending and that the home is no longer for sale. Also, the agent testified that the landlord intends to move into the property herself but has yet to issue a notice to reflect her intentions. Based on the information provided by the landlords agent, I hereby cancel the notice dated August 28, 2019 as the sale of the property did not go through. The notice is of no effect or force.

As the tenant was only partially successful in this application, I decline to award the filing fee and she must bear that cost.

### Conclusion

The Two Month Notice to End Tenancy for Landlords Use of Property dated August 28, 2019 is cancelled. The tenancy continues.

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: November 22, 2019

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Residential Tenancy Branch