



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON HYMARK REALTY  
and [tenant name suppressed to protect privacy]

## **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 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

NS appeared on behalf of the landlord in this hearing ('landlord'). The tenant appeared with his advocate DG. Both parties were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. The tenant confirmed receipt of the landlord's evidentiary materials. In accordance with section 88 of the *Act*, I find the tenant duly served with the landlord's evidence.

### **Preliminary Issue –Tenant's Evidence**

The landlord confirmed receipt of the tenant's evidentiary materials, with the exception of further evidence that was submitted a day before the hearing.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing.

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. As the tenant failed to submit a

portion of their evidence within the timelines prescribed by rule 3.14 of the Rules, I find that there is undue prejudice to the landlord by admitting the tenant's late evidence. Thus I exercise my discretion to exclude the tenant's late evidence. I find that the previous evidence submitted to be served in accordance with section 88 of the *Act*, and therefore will be considered for this hearing. I informed the tenant that they may still give sworn testimony for this hearing.

### **Issues 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 month-to-month tenancy began in 2010. Monthly rent is currently set at \$1,332.50, payable on the first of every month. The landlord holds a security deposit of \$650.00.

The landlord issued the 2 Month Notice on August 22, 2019, with an effective move-out date of October 31, 2019 for the following reason:

- 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.

The landlord provided the following background for why they had decided to issue the 2 Month Notice. They testified that the 2 Month Notice was issued as the landlord wanted to move into the home herself as she wanted to downsize and move into the home as part of her retirement plan. The landlord testified that for privacy and safety reasons the landlord did not feel comfortable disclosing details about her plans to move in. The landlord testified that the landlord was a real estate agent, and signs have gone missing. The landlord expressed concern as the landlord does not know who had taken the signs, and is worried about people finding out the location of her residence.

The landlord submitted that they are unable to confirm a move-in date considering that the tenant does not want to move out. The landlord does not dispute the deteriorating relationship between the parties since February 2019, and that the landlord did attempt to list the home for sale. The landlord has since taken the home off the market. The landlord also expressed concern about the tenant's failure to return a signed Form K.

The tenant feels that the landlord did not issue the 2 Month Notice in good faith, but rather to facilitate the sale of the property after the relationship had deteriorated between the two parties. The tenant testified that the landlord has not satisfied the burden of proof to show that the landlord in fact plans to move in, and why the landlord had chosen this particular home. The tenant testified that it was undisputed that the two parties no longer have a good working relationship, and the landlord's ultimate motive is to end this tenancy for that reason.

### **Analysis**

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.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy."*

Although the landlord stated that they had issued the 2 Month Notice in order to move into the rental unit, I find that the tenant had raised doubt as to the true intent of the landlord in issuing this notice. The tenant gave undisputed sworn testimony that the relationship has deteriorated between the two parties. As the tenant raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

The landlord did not confirm details of the move other than the fact that she had planned to move there as part of her retirement plan to downsize homes, citing the fact that she felt unsafe disclosing where she lived.

I find that the testimony of both parties during the hearing raised questions about the landlord's good faith. In coming to this determination, I find that the landlord has not provided sufficient evidence to support her intentions to move into the rental home. Although the landlord provided an explanation for the hesitance in providing specific details, I am not satisfied that this fear negates the landlord's obligations as set out in Policy Guideline 2. Furthermore, the landlord had clearly expressed concern about numerous issues that they had with the tenant, including the tenant's failure to return a form K.

I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, requires the tenant to vacate this specific rental unit in order for the landlord to move in.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated August 22, 2019, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

I find that the tenant is entitled to recovery of the filing fee.

### **Conclusion**

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated August 22, 2019, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: December 5, 2019

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Residential Tenancy Branch