



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, OLC, DRI, FFT

### Introduction

On November 1, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property. The Tenant also applied for an order that the Landlord comply with the Act, Regulation, or tenancy agreement; for money owed or compensation for damage or loss; to dispute an illegal rent increase; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and the Tenants appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. Both parties confirmed that they have exchanged the documentary evidence that I have before 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.

### Procedural 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 matter to determine is whether or not the tenancy is ending based on the issuance of a Two Month Notice to End Tenancy for Landlord's Use of Property dated October 28, 2019.

The Tenants have leave to reapply to pursue the other issues that were dismissed.

#### Issue to be Decided

- Is the Landlord entitled to end the tenancy based on the issuance of a Two Month Notice to End Tenancy for Landlord's Use of Property dated October 28, 2019.

#### Background and Evidence

The Landlord and Tenant both testified that the tenancy began on February 1, 2019, as a one year lease that continued thereafter on a month to month basis. Rent in the amount of \$1,200.00 is to be paid to the Landlord each month. The Tenants paid the Landlord a security deposit of \$500.00.

The Landlord issued the Tenants a Two Month Notice to End Tenancy for Landlord's Use of Property dated October 28, 2019 ("the Two Month Notice"). The reason provided within the Notice for ending the tenancy 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 individuals' spouse)*

The Two Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is December 31, 2019.

The Tenants disputed the Two Month Notice on November 1, 2019, within the required time period.

During the hearing the Tenants raised the concern that they did not receive a proper notice to end tenancy from the Landlord. The Tenants testified that they only received two pages of the required three-page notice. The Tenants submitted that the Notice is not enforceable.

In response, the Landlord's agent, Ms. S.I. testified that she made a mistake by not issuing the full notice. She testified that she only has the first two pages of the three-page notice.

### Analysis

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d )except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (d) **when given by a landlord, be in the approved form.***

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

The Landlord is seeking to end the tenancy based on the issuance of a Two Month Notice to End Tenancy for Landlord's Use of Property dated October 28, 2019. The approved form of a Two Month Notice contains three pages. The third page of the Notice contains important information for Landlords and Tenants regarding their rights and obligations under the Act.

I find that the Landlord only served the Tenants with first two pages of the Two Month Notice.

I find the Two Month Notice to End Tenancy for Landlord's Use of Property dated October 28, 2019 is not valid because the Landlord did not serve the entire notice to the Tenants. I find that the Notice was not in the approved form.

I find that the Notice is invalid and is unenforceable. The Tenants' application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated October 28, 2019, is granted. The Two Month Notice is cancelled.

The tenancy will continue until ended in accordance with the legislation.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenants were successful with their application. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenants to withhold the amount of \$100.00 from one (1) future rent payment.

### Conclusion

The Tenant's Application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated October 28, 2019, is granted. The Two Month Notice is cancelled.

The tenancy will continue until ended in accordance with the legislation.

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 17, 2019

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Residential Tenancy Branch