



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON SELECT PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, 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.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail and in part in person with the submitted documentary evidence. The landlord confirmed that no documentary evidence was submitted. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

### Preliminary Issue(s)

At the outset, the tenant's request for the landlord to comply was clarified. The tenant in her description of details failed to provide sufficient information on what she seeks concerning the request for the landlord to comply. The tenant was unable to provide any specifics. As such, this portion of the tenant's claim is dismissed with leave to reapply with specific issues.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks an order to cancel the 2 month notice to end tenancy for landlord's use as it was given in bad faith.

Both parties confirmed that the tenant was served with a 2 month notice to end tenancy for landlord's use dated November 1, 2019 posted to her rental unit door on November 5, 2019. The notice provides for an effective end of tenancy date January 31, 2019. The reason set out on the notice states in part,

*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 individual's spouse).*

The tenant provided written details stating "I seek the cancelation of this 2 Month-Notice to End my 13.5 + years of tenancy as it is served in Bad Faith. I assert the Owner/Agent are acting dishonestly in an attempt to defraud and deceive me and to gain an unconscionable advantage, irrespective of the spirit of the RTA, and have ulterior motives for issuing this notice to end tenancy, and avoid their obligations under the RTA and my tenancy agreement."

The tenant also provided evidence that the owner/landlord of the rental building is a corporation and as such has made by incorrect selection on the 2 month notice.

The landlord confirmed in his testimony that the owner is a corporation and that as such the selection of the reason for the notice was made in error.

Analysis

Subsection 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

In this case, the tenant noted that the landlord/owner is in fact a corporation instead of an individual. The landlord's agent confirmed this detail in his direct testimony.

The tenant's application to cancel the 2 month notice is granted. I find that the landlord's notice is defective and as such the 2 month notice dated November 1, 2019 is set aside. The landlord's notice provides for an individual as the landlord as opposed to it being a corporation. The tenancy shall continue.

### Conclusion

The tenant's application is granted.

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: January 16, 2020

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Residential Tenancy Branch