



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNL, MNDCT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49; and
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant's support person also attended the hearing.

Both parties agree that the landlord was served with the tenant's application for dispute resolution via registered mail. I find that the landlord was served in accordance with section 89 of the *Act*.

### Preliminary Issue- Evidence

Both parties agree that the landlord did not serve the tenant with his evidence package.

Section 3.15 of the *Rules* states that the Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Since the landlord did not serve the tenant with his evidence package, I find that the landlord's evidence is excluded from consideration.

### Preliminary Issue- Severance

Residential Tenancy Branch 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 to End Tenancy for Landlord's Use of Property and the continuation of this tenancy is not sufficiently related to the tenant's other claim 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 claim is unrelated in that the basis for it 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 Two Month Notice. I exercise my discretion to dismiss the tenant's claim for a monetary order for damage and compensation under the *Act* with leave to reapply.

#### Issue to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The tenant testified that he moved into the subject rental property in September of 2005 when the property was owned by a different landlord. The landlord confirmed that the tenant was residing at the subject rental property when his family corporation purchased it. The tenant testified that rent is \$740.00 due on the first day of every month. The landlord testified that he was not sure what rent is.

The landlord testified that a Two Month Notice to End Tenancy for Landlord's Use of Property, with an effective date of December 31, 2019 (the "Two Month Notice"), was posted on the tenant's door on October 28, 2019. The tenant confirmed receipt on either October 30<sup>th</sup> or 31<sup>st</sup>, 2019.

The Two Month Notice states the following reason for ending this tenancy:

- All of the conditions for the 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 landlord testified that the purchaser of the subject rental property requested vacant possession of the subject rental property. The landlord entered into evidence a contract of purchase and sale; however, this document is excluded from consideration as it was not served on the tenant. The landlord testified that he is a share holder in the family company that owns the subject rental property and that he did not receive a document from the purchaser stating why the purchaser wanted vacant possession, but it is possible that the company did.

The tenant testified that he has not received any documents about the purchase and sale of the subject rental property.

### Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. In this case, the landlord bears the onus.

Section 49(5) of the *Act* states that a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
  - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

I find that the landlord has not proved, on a balance of probabilities, that he or his family corporation received notice that the purchaser wanted to end the tenancy on the following grounds:

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

I note that a term in a contract of purchase and sale requiring vacant possession does not meet the notice requirements of section 49(5) of the *Act* as such a term does not state the grounds on which vacant possession is requested.

Based on the above, I find that the Two Month Notice is cancelled and of no force or effect. This tenancy will continue until ended in accordance with the *Act*.

#### Conclusion

The Two Month Notice is cancelled and of no force or effect.

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 09, 2020

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Residential Tenancy Branch