



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

**FFL MNDCL-S OPL**

**CNL FFT LRE MNDCT OLC**

### Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the *Residential Tenancy Act* (“Act”).

The landlord applied for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- An Order of Possession for Landlord’s Use of Property pursuant to sections 49 and 55.

The tenants applied for:

- An order to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property pursuant to section 49;
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- An order to suspend a landlord’s right to enter the rental unit pursuant to section 70;
- A monetary order for damages or compensation pursuant to section 67; and
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62.

Both the tenants attended the hearing and were represented by co-tenant, CB (“tenant”). The landlord KT also attended the hearing (“landlord”). Each of the parties confirmed receipt of one another’s Application for Dispute Resolution and evidence and stated there were no concerns with timely service of documents. I find both parties served in accordance with sections 89 and 90 of the *Act*.

#### Preliminary Issue – Unrelated Issues

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure (“Rules”) allow an arbitrator to consider whether issues are related and if they would be heard at the same time. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. I determined that the tenant’s application to cancel the Two Month Notice and the landlord’s application for an Order of Possession based on the Two Month Notice were sufficiently related and chose to hear that matter alone. The remainder of the tenants’ application and the landlords’ application were dismissed with leave to reapply.

#### Preliminary Issue – Two Month Notice issued after dispute resolution filed

The landlord testified that he served the tenants with a further Two Month Notice on December 16, 2019 and the tenant testified that he has filed an application to dispute that Notice. The hearing for that application has been set for March 2020. I advised both parties that the merits of that application would not be determined at this hearing but would be determined at the future hearing.

#### Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord’s Use be cancelled or upheld?

#### Background and Evidence

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. While I have turned my mind to all the documentary evidence and testimony, not all details of the parties’ respective submissions and/or arguments are reproduced here. The principal aspects of each of the parties’ respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. He and the co-tenant moved into the rental unit three years prior to the tenancy with this landlord. This landlord had purchased this

property with the tenants already occupying it and the tenants entered into a tenancy agreement with this landlord on June 1, 2017. A copy of the tenancy agreement was provided as evidence by the tenant. The fixed term tenancy was set to end on May 31, 2018, becoming month to month at the end of the fixed term. Rent was set at \$1,752.00 payable on the 13<sup>th</sup> day of each month. The parties agree that the tenants are up to date on paying rent.

The tenant testified he got an electronic communication from the landlord on September 18 notifying him that the landlord had sold his primary residence and was going to move into the rental unit. The parties met and the landlord advised him that he was going to temporarily live in the rental unit while getting it ready to be sold, then sell it so that he could purchase another property in a different city more to his liking. To accommodate the purchaser of his primary residence, the landlord wanted to move into the rental unit on November 15, 2019. The landlord's son attended later that evening and gave the tenants a handwritten note ("handwritten letter 1") that reads:

*Landlord of [address withheld for privacy] has informed tenants on September 18, 2019 that November 13, 2019 is the latest, or deadline to move out. Because landlord will live and move in [address].*

Signature spots were included on handwritten letter 1, but the tenants refused to sign it. The tenant testified that the landlords did not personally sign handwritten letter 1, but their son did so on their behalf. The tenant referred me to a chat message submitted into evidence where the landlord acknowledges this.

On September 21, 2019, the landlord hand delivered a second typed letter to the tenants ("typed letter 2") with the same information. This letter was signed by the landlords, but the tenants refused to sign it again. There is no date shown on this letter.

On November 3, 2019, the landlord emailed the tenants a Two Month Notice to End Tenancy for Landlord's Use ("Notice") drafted on a form RTB-32. The tenant acknowledges receiving this Notice by email the night of November 3, 2019 and both parties provided a copy of it in their evidence. The tenant points out the following deficiencies in the Notice. The Notice is back-dated to September 18, 2019. The reason for issuing the Notice is highlighted, not checked as the form indicates it should be. The Notice was served by email. The tenant also testified that he was never offered any type of compensation by the landlord for ending the tenancy. Even while the Notices were disputed, the landlord continued to seek rent from the tenants.

The tenant provided copies of handwritten letter 1, typed letter 2 and the Two Month Notice to End Tenancy for Landlord's Use as evidence.

The landlord provided the following testimony. He owns this rental unit (a house) and another house, his primary residence. He sold the primary residence on September 18, 2019 and was given until December 4, 2019 to move out. The landlord referred me to the offer of purchase and sale of his primary residence, however this document was not provided to me as evidence by the landlord.

The landlord testified that handwritten letter 1 is sufficient notice to end the tenancy and that he checked with the Residential Tenancy Branch who assured him it doesn't need to be signed by the tenants. Typed letter 2, which doesn't have a date on it, bears his signature and the signature of the co-landlord. The landlord submits that it contains the same content as handwritten letter 1.

When he discovered the tenants were not cooperating with his wish to have them move out, the landlord emailed the tenant with the form RTB-32 Two Month Notice to End Tenancy for Landlord's Use on November 3, 2019. The landlord testified that he felt he could backdate the Notice form to the day the first handwritten letter was given to the tenants because it bore the same information as that contained on the handwritten letter dated September 18<sup>th</sup>. The landlord testified he is aware that he did not have permission to serve this document by email but felt it would be OK since the information contained in the Notice is the same as that contained in the handwritten letter 1.

The landlord acknowledges he made a mistake when filling out the Notice form and didn't use the check mark to indicate which of the reasons for ending the tenancy he chose. Instead, he highlighted it indicating it was an error.

### Analysis

On November 6, 2019, the tenant filed to dispute the Two Month Notice to End Tenancy for Landlord's Use that was served by email to him on November 3, 2019. I find the tenant has filed within 15 days of receiving this Notice in accordance with section 49 of the *Act*.

Section 49 of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit. Section 49(7) states (7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in

the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

Section 52 of the *Act* reads as follows:

**Form and content of notice to end tenancy**

- 52** 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
  - (e) when given by a landlord, be in the approved form.**

I have examined handwritten letter 1, dated September 18, 2019 and typed letter 2, (undated) and find that neither of those documents comply with section 52(a) or (e) of the *Act*. As such, handwritten letter 1 and typed letter 2 are not formal notices to end tenancy and have absolutely no force or effect. I highlight section 52(e) which states the Notice must be in the approved form to be considered valid.

The landlord emailed the tenants with a Two Month Notice to End Tenancy for Landlord's Use on November 3, 2019. Although it is a valid form, service of a Notice to End Tenancy is governed by section 88 of the *Act* which does not allow a landlord to serve the tenant with it by email unless the landlord has been ordered by the director under section 71 (1) to do so. I find the landlord has not complied with section 88 of the *Act* and has improperly served the tenants with the Notice. For this reason, I find the tenant successful in disputing the Notice emailed to him on November 3<sup>rd</sup>.

I have examined the Notice that was improperly sent by email to the tenants on November 3<sup>rd</sup> and find the date of the signature for the landlord on the Notice is incorrect. While the landlord justifies back-dating the Notice to September 18, 2019 because it contains the same essential information as the handwritten notice 1; I find this argument to be self-serving and indefensible. There is no provision in common law or the *Residential Tenancy Act* that provides for the back-dating of any document. As such, I find the Notice does not comply with section 52(a) of the *Act*.

Section 49(2) states:

subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) **not earlier than 2 months after the date the tenant receives the notice,**

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

In examining the landlord's Notice, purportedly signed on September 18, 2019, I find the landlord is seeking to end the tenancy on November 13, 2019, less than 2 months after the tenant receives the notice. I find the Notice was not issued in accordance with section 49(2) and is also non-compliant with section 52(c) since the effective date is incorrect.

I find the Notice, improperly dated September 18, 2019, depicting an incorrect effective date and not served in accordance with section 88 on November 3, 2019 is of no force or effect and I cancel it.

### Conclusion

I order that the Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligation remaining unchanged until ended in accordance with the *Act*.

**This decision is final and binding on the parties.**

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 02, 2020

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Residential Tenancy Branch