



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, RP, OLC, FFT

### Introduction

The tenant filed an Application for Dispute Resolution on February 7, 2020 seeking an order to cancel the 'Two Month Notice to End Tenancy for Landlord's Use of Property' (the "Two Month Notice"). The matter proceeded by way of a hearing pursuant to section 74(2) of the of the *Residential Tenancy Act* (the "*Act*") on March 16, 2020.

In the conference call hearing I explained the process and offered the attending party the opportunity to ask questions. The Applicant tenant attended the hearing, and I provided them the opportunity to present oral testimony and make submissions during the hearing.

The tenant stated that they delivered the notice of this dispute resolution hearing to the landlord's address on February 10, 2020. They handed it to the landlord's brother and asked that it be given to the landlord directly. The tenant did not serve any evidence for this hearing, and only gave the notice of this dispute to the landlord's brother. The landlord did not submit or serve any documentary evidence for this hearing.

In the hearing I informed both parties that the tenant's request for repairs to the unit was not at issue. This was not the reason for service of the Two Month Notice. By Residential Tenancy Rule of Procedure 2.3, I find this issue is unrelated and I amend the tenant's application to exclude this matter. The tenant remains at liberty to file a new and separate application to address the repair issues.

### Issues to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the Two Month Notice?

Should the tenant be unsuccessful in seeking to cancel the Two Month Notice, is the landlord entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Is the tenant entitled to an order that the landlord comply with an order for the landlord to comply with the *Act*, the regulations, or the tenancy agreement, pursuant to section 62(3) of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed the evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant gave testimony on the current rental arrangement, with no written tenancy agreement in place. The rent amount was originally \$541.00 when the tenancy began in 2015. Currently, the rent amount is \$1,050.00 monthly, payable on the first day of the month.

The tenant stated that the landlord attempted to increase the rent to \$1,400.00 last year, and this was the subject of a prior dispute that was resolved through the Residential Tenancy Branch. They said the landlord asked, prior to the previous dispute result, whether they were going to move, making the statement that they had to move in 2 months' time.

The landlord issued this Two Month Notice on January 19, 2020, delivering it to the tenant in person on January 31, 2020. There is no copy of the Two Month Notice -- neither the tenant nor the landlord provided this document in evidence.

The timeline involving the previous dispute resolution between this landlord and tenant is as follows:

- the previous dispute resolution involved a Two Month Notice dated September 16, 2019;
- this was resolved, with an Arbitrator dismissing the Two Month Notice;
- prior to receiving that result, the landlord messaged the tenant to ask for a mutual agreement to end the tenancy – a text message copied as evidence shows the landlord stating “you can move by end of February or same notice I served you last time”;
- the tenant told the landlord he would wait for the previous dispute hearing result;
- the tenant paid rent as required for the month of January;
- the tenant received the prior hearing result that dismissed the previous Two Month Notice;

- the Two Month Notice that is the subject of this dispute was delivered to the tenant on January 31, 2020;
- The tenant paid rent as required for the month of February;
- The tenant applied for dispute resolution on February 7, 2020.

In this matter, the landlord bears the burden of proving the validity of the Two Month Notice served on the tenant.

In the hearing, the tenant specifically referred to the reason for service of the Two Month Notice, with that being for the same reason as that contained in the previous dispute, where the landlord wished to increase the amount of rent “according to his wish”.

The tenant also presented that the Two Month Notice in this matter is served as “another One”. This means they are “not able to enjoy [their] life”, with the current Two Month Notice served at the time of a final exam. The tenant also presented that their mother is always concerned about having to move, being scared when the landlord visits.

On the Application for Dispute Resolution, the tenant wrote that they are seeking an order for repairs to the unit. In the hearing, they spoke to repeated requests for repairs, and gave photo evidence showing the specific needs.

### Analysis

Section 49(3) of the *Act* provides that a landlord may end a tenancy by giving a Two Month Notice to end the tenancy “if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

A copy of the Two Month Notice was not provided by the tenant for this hearing. From the text message provided, where the landlord states “I really need the front Rec room for myself, every other day in the middle of the night I need to run to my office for my dispatch issues”. From this I find the purported reason the landlord issued the Two Month Notice to the tenant was for that reason found in section 49(3). Moreover, the tenant stated that this was the reason for the issuance of the previous Two Month Notice.

In this matter, the landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient.

There is no evidence from the landlord as to their aim of having a part of the rental unit converted into space for their usage. Moreover, the landlord did not attend the hearing to

speak to the issuance of the Two Month Notice for this reason. Additionally, there is no extant copy of the Two Month Notice submitted into evidence for this hearing. I conclude there is no valid or sufficient reason for the landlord to issue the Two Month Notice.

For this reason, I order the Two Month Notice to be cancelled.

### Conclusion

For the reasons above, I order that the Two Month Notice issued by the landlord on January 19, 2020 is cancelled, and the tenancy remains in full force and effect.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 3, 2020

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Residential Tenancy Branch