



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL DRI LRE FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) by the tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 22, 2020 (2 Month Notice), to dispute a rent increase, for an order to suspend or set limits on the landlord's right to enter the rental unit, site or property, and to recover the cost of the filing fee.

The tenant, the spouse of the tenant (spouse), the landlord, and the mother of the landlord (mother) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

The landlord confirmed that he received the documentary evidence from the tenant and had the opportunity to review the tenant's evidence. The landlord confirmed that that they did not serve the tenant with documentary evidence.

### Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on their application, the most urgent of which is the application to set aside the 2 Month Notice. I find that not all the claims on the tenant's application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 2 Month Notice at this

proceeding. The balance of the tenant's application is **dismissed, with leave to re-apply.**

#### Issues to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

#### Background and Evidence

The parties agreed that the tenancy survived the purchase of the home in April 2019, when the landlord assumed the month to month tenancy which began March 23, 2014. The tenant stated that monthly rent was \$800.00 and then increased to \$1,000.00, which the tenant stated will be disputed at another hearing as that matter was severed at the start of this hearing.

The parties agreed that the landlord served the tenant with a 2 Month Notice dated March 22, 2020, on the tenant on March 22, 2020. The tenant disputed the 2 Month Notice on March 26, 2020, which is within the timeline to dispute a 2 Month Notice under the Act. The effective vacancy date of the 2 Month Notice is listed as May 31, 2020.

The 2 Month Notice states the cause as "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." The tenant writes in their application that the landlord stated that their parents are coming from India, but their parents are already living with them.

During the hearing, the mother of the landlord (mother) testified that the in-laws of their son's wife would be coming from India to live in the basement suite. The spouse testified that HS, who is the father-in-law of their son, is already living in the upstairs portion of the home and plans to move into the basement. The landlord's mother testified that HS's wife will be coming from India once the COVID-19 restrictions are lifted.

The tenant asked the landlord that if HS is already living upstairs then why does HS need to live in the basement. The mother of the landlord stated that they want to have HS and his wife residing in the basement suite.

### Analysis

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

The 2 Month Notice was disputed within the 15-day timeline provided for under section 49 of the Act to dispute a 2 Month Notice. When a tenant disputes a 2 Month Notice, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The landlord chose not to testify and decided to rely on the testimony of their mother at this proceeding. The mother of the landlord testified that their son's in-laws plan to move into the basement suite, and that HS is currently residing in their home but living upstairs. Section 49 of the Act applies and defines "close family member" as follows:

#### **Landlord's notice: landlord's use of property**

**49(1)** In this section:

"close family member" means, **in relation to an individual,**

- (a) the individual's parent, spouse or child, or**
- (b) the parent or child of that individual's spouse;**  
[Emphasis added]

In addition, RTB Policy Guideline 2A, applies and reads in part:

"Close family member" means the landlord's parent, spouse or child, or the parent or child of the landlord's spouse. **A landlord cannot end a tenancy under section 49 so their brother, sister, aunt, niece, or other relative can move into the rental unit.**

[Emphasis added]

Given the above, I find that the landlord's plans relate to two people that do not meet the definition of "close family member" under section 49 of the Act and Policy Guideline 2A. In other words, the reason provided by the landlord to have their in-laws move into

their basement, is not a valid reason for ending the tenancy. As a result, **I cancel** the 2 Month Notice as I find the landlord has failed to meet the burden of proof to prove that the 2 Month Notice is valid. I find the landlord has provided insufficient evidence to support the reason listed on the 2 Month Notice.

**I ORDER** the tenancy to continue until ended in accordance with the Act.

As the tenant's application was successful, I grant the tenant a one-time rent reduction of **\$100.00** from a future month of rent in full satisfaction of the filing fee pursuant to section 72 of the Act. This rent reduction is made pursuant to section 62(3) of the Act.

### Conclusion

The 2 Month Notice issued by the landlord dated May 22, 2020 is cancelled, due to insufficient evidence.

The tenancy has been ordered to continue until ended in accordance with the Act.

The tenant has been granted a one-time rent reduction of \$100.00 for the filing fee.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 21, 2020

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Residential Tenancy Branch