



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNRL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on May 30, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities; and
- an order of possession for landlord use of the property.

The Landlord and the Tenant attended the hearing at the appointed date and time. The Landlord testified that he served the Application and documentary evidence package to the Tenant in person on June 3, 2020. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant did not submit any documentary evidence for my consideration.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

At the start of the hearing, the Landlord stated that the Tenant has paid the rent in full, therefore, he requested to withdraw his claim for monetary compensation based on unpaid rent. The Application was amended accordingly. The hearing continued based

on the Landlord's Application for an order of possession for Landlord's use of the property.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a Two Month Notice for Landlord's Use of the Property (the "Two Month Notice") dated January 28, 2020, pursuant to Section 49 and 55 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 1, 2019. The Tenant is required to pay rent in the amount of \$1,100.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,000.00. The Tenant continues to occupy the rental unit.

The Landlord stated that his brother has purchased the rental unit from the Landlord and that his brother intends to move into the rental unit on July 7, 2020. The Landlord stated that the Tenant has been provided ample opportunity to find a different living arrangement, however, she continues to occupy the rental unit.

The Landlord testified that he served the Tenant in person with the Two Month Notice on January 28, 2020, with an effective vacancy date of March 31, 2020. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"All 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 Tenant confirmed having received the Two Month Notice on January 28, 2020. The Tenant confirmed that she continues to occupy the rental unit and has not disputed the Two Month Notice. The Tenant stated that she has been unable to find a suitable living arrangement, therefore, has not yet complied with the Two Month Notice.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(5) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord;

- (a) 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;

The Landlord stated that he served the Tenant in person with the Two Month Notice on January 28, 2020 with an effective vacancy date of March 31, 2020. The Tenant confirmed receipt. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice.

According to subsection 49(9) of the Act, if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this case, the Tenant testified that she received the Two Month Notice on January 28, 2020. Therefore, the Tenant had until February 12, 2020 to make an Application for dispute resolution, or is conclusively presumed to have accepted the tenancy has ended on the effective date of the Two Month Notice.

As the Tenant did not apply to dispute the Two Month Notice in accordance with Section 49(8), I find that she is conclusively presumed to have accepted the end of the tenancy according to the effective date, March 31, 2020.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 1:00 P.M. on June 30, 2020, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant has breached the Act by not complying with the Two Month Notice. The Landlord is granted an order of possession effective at 1:00 P.M. on June 30, 2020, after service on the Tenant. The order should be served to the Tenant as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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: June 25, 2020

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Residential Tenancy Branch