



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, OPL, FFL

### Introduction

This hearing dealt with cross applications filed by the parties. On September 18, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act").

On September 25, 2020, the Tenant amended her Application seeking to change the dispute address.

On October 2, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to Section 49 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, and P.B. attended the hearing claiming that he was a Landlord pursuant to the definition under Section 49 of the *Act*. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package by hand on or around September 25, 2020. P.B. confirmed that he received this package; however, he claimed that it was served on October 2, 2020. While there was a dispute over when this was served, he stated that he received it, that he understood the nature of the Tenant's Application, and that he was prepared to proceed. As such, I am satisfied that the Tenant's Notice of Hearing package was served.

The Tenant advised that she served her Amendment by hand, but she was not sure when, and a considerable amount of time was being spent on service of documents. It is her position that the rental unit should be designated as a "basement". However, P.B.

advised that the rental unit has its own legal address and there is no designation as a separate basement. Based on P.B.'s submissions as the "Landlord", I accept that the rental unit is not designated as a basement, and the Style of Cause on the first page of this Decision reflects this.

P.B. advised that he served the Notice of Hearing package by hand on October 9, 2020 and the Tenant confirmed that she received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord's Notice of Hearing package was served.

The Tenant advised that she served her evidence to P.B. by hand on November 13, 2020 and P.B. confirmed that he received it. However, he stated that as it was served so late, he attempted to respond to it, but he was not fully prepared. As this evidence was not served in compliance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, the Tenant's evidence has been excluded and will not be considered when rendering this Decision.

P.B. advised that he served the Landlord's evidence to the Tenant by hand on November 11, 2020 and the Tenant confirmed that she received it. However, she stated that she did not receive the Landlord's digital evidence, and as the documentary evidence was served so late, she was not prepared to respond to it. As this evidence was not served in compliance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, the Landlord's evidence has been excluded and will not be considered when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

P.B. advised that he is a "hands-off" Landlord, that he casually manages this property, and that he has not documented much, if anything, that has happened over the years. He stated that he started renting the unit to the Tenant's mother approximately eight years ago, but he was uncertain of any specific dates. He submitted that Tenant's brother moved in shortly after the mother moved in. He stated that the mother became sick approximately three years ago, and the Tenant moved in to help take care of her. He testified that the mother always paid rent of \$750.00 per month and had paid the security deposit of \$375.00 as well. He never formalized the tenancy, as required under the Act, with a written tenancy agreement.

When she passed away three years ago, the Tenant's brother started paying the rent of \$750.00 per month. He claimed that this person gave a written notice to end the tenancy on July 21, 2020 that was effective for August 1, 2020 and that this person moved out temporarily, but moved back shortly after that. P.B. advised that he served this person with a Two Month Notice to End Tenancy for Landlord's Use of Property on July 28, 2020.

He then claimed that the Tenant gave him rent on September 2, 2020 in the amount of \$750.00, that he is not sure why she did this as she has never given him rent before, and that he "assumed it was for rent." He confirmed that he accepted this and deposited the money into his account. He then advised that he served the Tenant the Two Month Notice to End Tenancy for Landlord's Use of Property, that is the subject of this dispute, on September 5, 2020. He claimed that the reason he served this Notice to the Tenant was because he was required to as he had to evict her as well.

The Tenant confirmed that she received this Notice on or around September 5, 2020. She advised that her mother and brother originally moved in eight years ago and rent in the amount of \$750.00 was always paid in cash. The Tenant advised that she moved into the rental unit in December 2016, and P.B. gave her approval for this. She stated that after her mother passed away in January of 2017, she would pay half the \$750.00 rent and her brother would pay the other half. She testified that P.B. would arrive on the last Wednesday of every month to collect the rent.

In May 2017, P.B.'s son moved into the unit above her and P.B. told her to give rent to the son, for him to collect later. She stated that P.B. has known that she has been a Tenant there and has been paying half of the rent since 2017.

P.B. advised that the reason the Notice was served is because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)" and that the person moving into the rental unit is "The child of the landlord or landlord's spouse." The effective end date of the tenancy was noted as November 30, 2020.

He submitted that his mother is the owner of the rental unit and that he has always acted as the Landlord of the property. He collects all the rent and deposits it into his bank account. He is responsible for all the repairs to the rental unit and that the house will be his inheritance. As it is his belief that he is a Landlord as defined by the *Act*, he served this Notice as he would like his son to move into the rental unit. He stated that his son lives upstairs and his family is too large for the space, so the rental unit is required to accommodate them. He stated that his son will eventually buy the rental unit.

The Tenant advised that P.B. is not a Landlord under the *Act* as he is not the owner of the rental unit. Therefore, he is not permitted to serve this Notice on the owner's behalf for his son's occupation of the rental unit. Furthermore, as P.B.'s mother is the owner of the rental unit, only her close family member, as defined by the *Act*, would be allowed to occupy the rental unit after the Notice was served by the mother. As such, the owner's grandchildren would not be permitted to occupy the rental unit as indicated on the Notice as the grandchildren would not be considered a close family member of the mother, as defined by the *Act*.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

This Section also defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse. In addition, it defines a Landlord as an individual who at the time of giving the Notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

With respect to the Notice, in considering the reason for ending the tenancy, I find it important to note that the burden of proof lies on the person who issued the Notice to substantiate that the rental unit will be used for the stated purpose on the Notice. However, I must first determine if P.B. is a Landlord as defined by the *Act*.

Clearly the undisputed evidence is that P.B. does not own the rental unit but has been acting as an agent for the owner. Moreover, based on his statement that he is "hands-off" and from his inconsistent testimony, it is evident that the manner with which he has managed this rental unit has been very informal, casual, and undocumented. As such, I do not find his testimony to be reliable, nor am I persuaded that the Tenant was not paying him rent. This finding is reinforced by the fact that he served the Notice in the Tenant's name. If he did not believe she was a Tenant, there would have been no reason to serve this person a notice to end a tenancy.

While the relationship between the parties is not entirely clear, I am satisfied on a balance of probabilities, that the Tenant and her brother have been paying the rent for

many years, and that P.B. had essentially created an unwritten month to month tenancy between the parties.

I will now turn the focus to whether P.B. is a Landlord as defined by the *Act*. Section 49 defines a Landlord as an individual who at the time of giving the Notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest. While not defined by the *Act*, a reversionary interest is defined as an interest that reverts back to the settlor of a trust once a beneficiary's interest has come to an end.

When reviewing P.B.'s submissions on how he meets the definition of Landlord under Section 49 of the *Act*, I note that he has provided no documentation to corroborate that he maintains a reversionary in the rental unit. In addition, I do not find that the fact that receives rent or that he completes repairs to support any finding that this constitutes a reversionary interest in the rental unit. Rather, these responsibilities, in my view, are clearly actions and responsibilities that would be associated with that of an agent that works on behalf of a Landlord.

Given this, I am not satisfied that P.B. has provided sufficient evidence to support that he is a Landlord, as defined by Section 49 of the *Act*. As such, the Style of Cause on the first page of this Decision has been amended to reflect the correct Landlord/owner of the rental unit. Moreover, I do not find that P.B. was permitted to serve this Notice for the purpose of his child moving into the rental unit.

Based on my assessment of the totality of the evidence before me, and of P.B.'s unreliable, dubious, inconsistent testimony, I am not satisfied that he has sufficiently substantiated the grounds for ending the tenancy under the reason on the Notice. Ultimately, I am not satisfied of the validity of the Notice, and as a result, I find that the Notice is of no force and effect.

As P.B. was not successful in this Application, I find that he is not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of September 5, 2020 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: November 14, 2020

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Residential Tenancy Branch