



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

This hearing dealt with the tenant's application pursuant to section 49 of the *Residential Tenancy Act* (the "Act") for cancellation of a 2 Month Notice to End Tenancy for Landlord's Use.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant appeared and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord personally with their application and evidence on February 9, 2021. The application record shows the landlord submitted their own evidence in response to the tenant's application. Based on the evidence I find the landlord duly served with the tenant's application and evidence on February 9, 2021 in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

### Background and Evidence

This periodic tenancy began on March 1, 2020. The monthly rent is \$1,300.00 payable on the first of each month. A security deposit of \$650.00 was paid at the start of the tenancy and is still held by the landlord.



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The landlord issued a 2 Month Notice dated January 31, 2021 with an effective date of March 31, 2021. The reasons provided on the notice are that the rental unit will be occupied by the landlord or the landlord's close family member and that all of the conditions for the sale of the rental unit have been satisfied and the purchasers have asked the landlord in writing to issue the notice as the purchaser or a close family member intends in good faith to occupy the rental unit. The 2 Month Notice provides no information on the purchaser and attached no contract of purchase and sale or written request.

The landlord has submitted as evidence for the present hearing a document titled, Letter of Intent, which does not identify the same rental unit address.

The tenant also gave some evidence that the landlord has stopped heat, water and electricity to the rental unit in contravention of section 65 of the *Act*.

## Analysis

Section 49(8)(a) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property issued under subsection (5) the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I accept the undisputed evidence that the 2 Month Notice was received on or about February 5, 2021 and the tenant filed their application for dispute resolution on February 6, 2021. I therefore find that the tenant is within the time limits provided under the *Act* to dispute the 2 Month Notice.

When a tenant files an application to dispute a Notice to End Tenancy, the landlord bears the burden to prove the grounds for the 2 Month Notice.

Residential Tenancy Rule of Procedure 7.4 provides that evidence must be presented and if a party or their agent fails to attend the hearing, any written submissions supplied may or may not be considered.



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As the landlord failed to attend the hearing and make any submissions, I will not consider the documentary materials provided. I find that in the absence of the landlord to make any submissions or arguments they have failed to meet their evidentiary burden on a balance of probabilities to establish the basis for the 2 Month Notice. Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The notice is of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

As the tenant's complaints of the landlord's cutting utilities to the rental unit were not part of this application I make no finding on this issue.

## Conclusion

The 2 Month Notice of January 31, 2021 is cancelled and of no further 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: April 26, 2021

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Residential Tenancy Branch