



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** CNL CNR

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notices to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and amendment to dispute the additional 2 Month Notices to End Tenancy. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application and amendment. Both parties confirmed that although they were served with other's evidentiary materials, the documents were not served within the prescribed timelines. However, the parties confirmed that they were in receipt of these materials, reviewed these materials, did not take issue with the admittance of these materials, and that that they wished to proceed with the hearing as scheduled. Accordingly, the hearing proceeded to deal with the tenant's application to cancel the Notices to End Tenancy.

The tenant confirmed that they were served with a 10 Day Notice for Unpaid Rent on March 6, 2021, and two, 2 Month Notices to End Tenancy for Landlord Use dated April

27, 2021. Accordingly, I find that the tenant was duly served with the Notices to End Tenancy.

**Issues to be Decided**

Should the landlord's 10 Day Notice be cancelled pursuant to section 46 of the *Act*? If not, then is the landlord entitled to an Order of Possession?

Should the landlord's 2 Month Notices be cancelled? If not, is the landlord entitled to an Order of Possession?

**Background**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on July 1, 2006. The tenant testified that monthly rent is set at \$450.00, payable on the first of the month. The landlord testified that monthly rent was a higher amount, but agreed that he had been accepting rent payments from the tenant in the amount of \$450.00 for some time.

The landlord served the tenant with a 10 Day Notice for Unpaid Rent on March 6, 2021. The tenant submitted a copy of the "Notice", which is a four page typed document titled "Notice to Pay Rent or Quit" dated March 6, 2021. The typed document states that the tenant was late in payment of rent totalling \$1,500.00, and that "this rent was due on March 1, 2021". The Notice also states that the tenant is "hereby required to PAY the said rents, in full, to the Landlords, or its agents, within 10 days in which to pay 1075.00 in accordance with RTB laws".

The tenant was also served with two, 2 Month Notices to End Tenancy dated April 27, 2021. One Notice indicated an effective date of April 27, 2021, and the second indicates an effective date of June 30, 2021. The reason provided on the Notices state that the landlord wishes to end the tenancy because:

"All of the 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 is disputing these Notices as he believes that the landlord has not issued the notices in good faith. The tenant believes that the home was sold for redevelopment, not occupation by the landlord, as indicated by the signs stating that a rezoning application had been made. The tenant submitted photos of these signs.

The landlord responded in the hearing that he served the 2 Month Notices because the purchaser is taking possession on July 6, 2021, and the landlord has been asked to serve the tenants with the 2 Month Notice for landlord's Use. The landlord provided the documents to support the sale in their evidentiary materials. The landlord testified that the home was not liveable, and the house is a "tear down".

### **Analysis**

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

- (a) the landlord 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;
  - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The tenant also questioned the purchaser's true intentions as the tenant believes that the purchaser had purchased the home to demolish it, and not occupy the home as noted on the 2 Month Notices. The tenant argued that the landlord did not serve the tenant with the proper Notice under the relevant section for demolition of the home.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then*

*that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”*

As the tenant raised doubt as to the landlord or purchaser’s true intentions, the burden shifts to the landlord to establish that they or the purchaser do not have any other motive in ending this tenancy.

In light of the evidence and testimony before me, I find that the landlord has not met their burden of proof to show that they issued the 2 Month Notice in good faith, and that the purchaser or a close family of the purchaser intends to occupy the home. I find that the testimony of both parties during the hearing raised questions about the landlord and purchaser’s good faith. I find that the landlord’s own testimony referred to the home as a “tear down”, and the evidence provided by the tenant supports that the purchaser intends to demolish the property rather than occupy it. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord or purchaser, in good faith, requires the tenant to permanently vacate the home for the specific purpose of occupation by the purchaser or a close family member of the purchaser.

Accordingly, I allow the tenant’s application to cancel both 2 Month Notices dated April 27, 2021. The landlord’s 2 Month Notices are hereby cancelled and are of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant also disputed the 10 Day Notice for Unpaid Rent dated March 6, 2021.

Section 52 of the *Act* states the following about the form and content of a Notice to End Tenancy:

**52** *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form...*

Although the landlord testified to service of the Notice to End Tenancy on the tenant, I find that the "Notice" does not constitute an approved form under the *Act* and *Regulations*. Furthermore, the evidence of the landlord is that he had been accepting monthly rent in the amount of \$450.00 for some time. In light of the evidence before me, I am not satisfied that the tenant owes the landlord any unpaid rent. For these reasons, I find that the 10 Day Notice is invalid. I am allowing the tenant's application for cancellation of the 10 Day Notice for Unpaid Rent dated March 6, 2021. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

### **Conclusion**

The tenant's application to cancel the landlord's 2 Month Notices and 10 Day Notice is allowed. The landlord's 10 Day Notice dated March 6, 2021 and 2 Month Notices dated April 27, 2021 are all cancelled and of no force or effect. This tenancy continues until it is 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: June 17, 2021

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Residential Tenancy Branch