



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNL, FFT**

### **Introduction**

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

- An order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The landlord and the tenant MS attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Application for Dispute Resolution and stated he had no issues with timely service of documents. The tenant testified she was not served with any of the landlord's documents. The landlord testified that he did not think he was required to serve his evidence to the tenant and acknowledged he did not do so. The landlord's evidence was not served in accordance with rule 3 of the Residential Tenancy Branch rules of procedure and as such, the landlord's documentary evidence was excluded from consideration in this decision. The landlord's testimony was admitted into evidence as was the tenant's testimony and the documents she exchanged with the landlord.

### **Issue(s) to be Decided**

Should the landlord's Two Month's Notice to End Tenancy for Landlord's Use be upheld or cancelled?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence by the tenant. The fixed one-year tenancy began on November 1, 2020 and was set to end on December 31, 2021. Rent was set at \$1,000.00 per month payable on the first day of each month. The parties agree that the rental unit is one of two side by side units located on the residential property. The other unit is rented out to the tenants' friend on a month-to-month basis.

The landlord gave the following testimony. The house was once registered in the landlord's and the landlord's mother's name. The landlord has a 2/3 interest in the house and when the landlord's mother died in 2016, she willed her 1/3 interest in the house to the landlord's sister. The landlord's sister is not named as a landlord on the tenancy agreement. The landlord is listed as the sole landlord on the tenancy agreement because he was the administrator of the mother's estate.

When the landlord's mother died, he wanted to buy his sister out of her portion of the house, but the sister changed her mind. As of May 17, 2021, the property is now registered at the land title office in both the landlord's and the landlord's sister's name. The landlord testified his sister's son, (the landlord's nephew) is going to live in the rental unit. The landlord did not call his sister or his nephew to provide any testimony for the hearing.

The landlord testified that he believes the tenant living in the other suite, HW personally served the tenant JB with a Two Month Notice to End Tenancy for Landlord's Use on April 29, 2021. The tenant MS was not served with a copy of it.

On the copy of the notice to end tenancy provided, only the tenant JB is named as a tenant. The landlord testified that he did not add the tenant MS's name because the "original" tenancy agreement only included JB. No alternate copies of tenancy agreements were provided as evidence. During the hearing, the landlord was unable to advise specifically which reasons were chosen for ending the tenancy on the second page, stating that he was ending the tenancy "for family use". The landlord testified that the named landlord is a person and not a family corporation.

The tenant testified that she chose this rental unit because the landlord was willing to enter into a one-year fixed term. The tenant was in the midst of a divorce and wanted the stability of the full year tenancy. The tenant testified that the notice to end tenancy served to the co-tenant JB was just the first page, sent by text message and followed up with the single page document being left at JB's workplace. The tenant questions why

the landlord's agent didn't serve her personally at the rental unit, since she works from home and is present daily.

### Analysis

I am satisfied that the tenant JB was personally served with the Two Month's Notice to End Tenancy for Landlord's Use on April 29, 2021. The tenant MS filed an application to dispute the notice on the following day, April 30<sup>th</sup>, well within the timeline of 15 days as required by section 49 of the Act.

Section 49(2)(a) of the Act states:

Subject to section 51 [*tenant's compensation: section 49 notice*], **a landlord may end a tenancy**

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) **if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.**

(bold emphasis added)

In this case, the parties were bound by a fixed term tenancy agreement, scheduled to end on December 31, 2021. Section 49 is clear and unequivocal; the landlord cannot end a fixed term tenancy before the end of the fixed term. I find the landlord's Two Month's Notice to End Tenancy for Landlord's Use does not comply with section 49(2)(a)(iii) as it states a date earlier than the date specified on the tenancy agreement as the end of the tenancy. For this reason, I cannot uphold the landlord's notice to end tenancy and I order that it be cancelled. The tenancy shall continue with the rights and obligations of the parties unchanged until ended in accordance with the Act.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application. Pursuant to section 72 of the Act, I order that the tenant deduct \$100.00 from a single rent payment due to the landlord.

### Conclusion

The notice to end tenancy is cancelled and of no further force or effect.

The tenant may deduct \$100.00 from one single rent payment due to the landlord pursuant to section 72 of 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: August 23, 2021

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Residential Tenancy Branch