



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNL OLC

### **Introduction**

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

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. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice dated May 23, 2021 which was posted on the tenant's door, I find that the tenant duly served with the 2 Month Notice.

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

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

Is the tenant entitled to an order for the landlord to comply with the *Act*?

### **Background and Evidence**

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 November 1, 2011. Monthly rent is currently set at \$570.35, which is paid directly to the landlord from the Ministry of Social Development and Housing. The tenant testified that no security deposit was collected for this tenancy.

On May 23, 2021, the tenant was served with a 2 Month Notice for Landlord's Use, which indicated that child of the landlord would be moving in. The landlord submitted in their written evidence, and confirmed under oath in the hearing that the child is their son, who currently resides in the home with the landlord and their spouse. The landlord testified that their son had obtained a new position as a warehouse manager/shipper in the past year, which entails evening and night shifts which frequently involves the son returning home at 2:00 a.m. The landlord submits that the late night arrivals have caused a significant disturbance to the landlord and landlord's spouse, which has resulted in undue stress and fatigue. The landlord submits that the situation has had a negative impact on the relationship between the family members, as well as their health and ability to manage the family owned and operated woodworking business.

The landlord testified that there are two cabins and one duplex rented out on the property, and the tenant resides in the cabin furthest back. The landlord testified that the tenant's cabin was chosen due its location on the property, and due to the fact that the cabin is pet friendly and would accommodate the family dog. The landlord testified that there are no vacant cabins on the property at the moment, and that this specific cabin was well-suited for their son, and would alleviate the aforementioned issues that the family is facing. The landlord submits that all procedural requirements are met, and that they require the cabin immediately in order for the son to move in as soon as possible, which the family hopes to ease some of the strain.

The tenant is disputing the 2 Month Notice as they believe that the 2 Month Notice was not issued in good faith. The tenant's advocate pointed out that they had written a letter to the landlord on April 28, 2021 after the tenant had sought help in relation to some issues the tenant was having with the landlord. The tenant included a copy of this letter in their evidentiary materials, which notes that the tenant felt threatened and intimidated after the landlord had objected to the tenant bringing in her own small appliances,

specifically a washer, dryer, and dishwasher. The tenant testified in the hearing that she had purchased these appliances in 2015, and had been using these appliances until the landlord ordered that they be removed. In the letter the advocate notes that the tenant's utilities are included in the monthly rent, and suggested that a written tenancy agreement be signed by both parties in order to clarify expectations as a written tenancy agreement did not exist. The tenant feels that the 2 Month Notice was in retaliation to the letter as the 2 Month Notice was served less than a month after the letter was given to the landlord. The tenant testified that the landlord had threatened the tenant with eviction on multiple occasions.

In addition to the application to cancel the 2 Month Notice, the tenant also requested an order that the landlord comply with the *Act*, including clarification of the terms of use of utilities and the property, as well as the rights of the tenant under the *Act* and tenancy agreement.

The landlord responded that they do not have ulterior motives in ending this tenancy, and that they truly require the cabin for their son's use. The landlord confirmed that they did ask the tenant to remove the appliances as they were concerned about their insurance coverage and liability, as well as electrical issues due to the installation and use of the unauthorized appliances, which were not present at the beginning of the tenancy. The landlord testified that they were concerned about the ability to renew their home insurance, and maintain coverage. The landlord testified that they were unaware of the new appliances, and disputes that permission was ever given or obtained.

### **Analysis**

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

*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.”*

Although the landlord stated that they had issued the 2 Month Notice in order for their son to occupy the suite, I find that the tenant has raised doubt as to the true intent of the landlord in issuing this notice, which the tenant submits was issued shortly after the tenant's advocate had written the letter a landlord about a dispute over the tenant's right to use appliances purchased by the tenant. The tenant's advocate submits that there is an ongoing dispute between the parties, and that this dispute is the true reason for why the landlord wishes to end this tenancy, especially in light of the fact that there is another cabin of similar size on the property that is also tenanted.

I find that the landlord has not met their burden of proof to show that their son would be occupying this home, and that is the true reason for ending this tenancy. I find that the testimony of both parties during the hearing raised questions about the landlord's good faith, particularly the testimony about how the issuance of the 2 Month Notice was served less than a month after the tenant's advocate had written a letter requesting clarification about the tenant's right to use their appliances. Despite the explanation provided about why the son would be moving into the home, I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Although the landlord may have fulfilled their procedural obligations in terms of service of the 2 Month Notice, the landlord must still satisfy the arbitrator why this specific tenancy must end for the purpose indicated on the 2 Month Notice. As confirmed in the hearing, there is another cabin on the property which is also tenanted. Although perhaps more private and ideally situated, and “pet friendly” as described by the landlord, I find the landlord failed to establish why the tenant's specific cabin was chosen over the other one, especially considering the urgency of the situation as described by the landlord. Based on the totality of the evidence before me, I find that I have significant doubt as to the true intentions of the landlord in the issuance of this 2 Month Notice.

I therefore allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice dated May 23, 2021 is hereby cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

In consideration to the other part of the tenant's application, I am not satisfied that there has been a contravention of the *Act* on part of the landlord that necessitates an order at

this time. As confirmed in the hearing, the tenant's utilities are included in the monthly rent, and some time in 2015, the tenant had purchased some appliances which include a washer/dryer, and a dishwasher. The tenant has since removed the appliances as requested by the landlord, and without an order from the Arbitrator. As noted above, the tenant has the right to continue residing in the cabin, which includes the use of the included facilities and services. If the landlord is seeking an Order of Possession for the tenant's breach of the *Act* or tenancy agreement, the landlord must do so through the proper avenues available to the landlord. Similarly, if the landlord denies the tenant any included services or facilities, the tenant has the right to file an application for the landlord to provide these services or facilities as provided for under the tenancy agreement. I note that an agreement could be written or implied. As neither party had filed these corresponding applications, I exercise my discretion to dismiss this portion of the tenant's application with leave to reapply.

### **Conclusion**

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated May 23, 2021 is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The remainder of the tenant's application is dismissed with leave to reapply.

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: September 28, 2021

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Residential Tenancy Branch