



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **CNL, LAT**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

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 change the locks to the rental unit pursuant to section 31.

The tenant attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that he had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that he had served the landlord with the notice of this hearing and his evidence by Canada Post registered mail on June 28, 2021, and referred to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. Based on this evidence, I deem that the landlord was served with the documents for this hearing on July 3, 2021, five days after it was sent by registered mail, in accordance with sections 88 and 89 of the *Act*.

This hearing proceeded in the absence of the landlord pursuant to rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

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

If cancelled, should the tenant be entitled to change the locks to the rental unit?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on September 1, 2016 with the landlord and two tenants: the named tenant and his brother. Rent was set at \$900.00 per month payable on the first day of each month. The tenant testified that he and his brother continue to occupy the rental unit.

The tenant testified that the rental unit is the bottom unit of a house with an upper and lower unit. The landlord owns the entire house. On June 1, 2021, the landlord served the tenant with a Two Month's Notice to End Tenancy for Landlord's Use, ("notice") seeking to end the tenancy on September 1, 2021. A copy of the notice was provided as evidence. The tenant testified that he only received pages 1 and 2 of the notice and pages 3 and 4 were missing. The tenant also notes that only one of the two tenants named on the tenancy agreement was named on the notice to end tenancy. The other tenant, his brother, was not named on the notice to end tenancy or served with a copy of it. The tenant points out that in the landlord's evidence, the landlord admits to these errors, stating, "Sorry, I missed [brother's name] on the form. My error. Again, my error, I did not think those pages were for you as I didn't read them..."

The tenant believes the landlord has an ulterior motive to ending the tenancy. He testified that the landlord plans on renting out the entire house after the tenants vacate the lower unit. This way, the landlord can obtain more rent money for the entire house.

The tenant states the landlord has, on numerous occasions, unlocked the door or entered the rental unit unaccompanied and without notice. The most recent occasion was when the landlord served the tenant with documents for this hearing by pacing them in the door jamb and closing the door. The tenant testified the documents were not slipped into the door through an opening. In 2017, while the tenant was in the hospital for a mental illness, the landlord entered the tenant's unit, without notice and unaccompanied, and took \$800.00 from a book in the tenant's drawer. The tenant testified the landlord told his mother about the incident afterwards and points out that in the landlord's evidence submission, the landlord admits to taking the money. The tenant testified he doesn't know exactly how much money he had in the book for

safekeeping at the time, it's possible the landlord took more than the \$800.00 she admits to. The tenant also gave undisputed testimony stating that the landlord had also entered his rental unit once when he was asleep to take some beer from his fridge and another instance where the landlord had unlocked his door and turned on his outdoor lights without permission or proper notice.

### Analysis

Based on the tenant's undisputed evidence, I find the tenant was served with the landlord's Two Month's Notice to End Tenancy for Landlord's Use on June 1, 2021 and filed an application to dispute it on June 8, 2021, seven days later. Section 49 of the *Act* provides that upon receipt of a Notice to End Tenancy for Landlord's Use, the tenant may, within fifteen days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. I find the tenant filed to dispute the Notice within the fifteen days as required by section 49.

If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the validity of the grounds for issuing the 2 Month Notice and that the Notice is on the approved form; pursuant to 52 of the *Act* and Rule 6.6 of the Residential Tenancy Branch Rules of Procedure.

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply. Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any testimony or evidence from the landlord, who bears the burden of proof in this matter, I find the landlord has failed to prove the grounds for issuing the Notice to End Tenancy. For this reason, the notice to end tenancy is cancelled.

Further, pursuant to section 49(7), a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. Section 52(e) states that the notice to end tenancy, when given by a landlord, must be in the approved form. I find that the landlord failed to provide pages 3 and 4 of the form, which renders the form ineffective.

For both of the reasons cited above, the tenant has succeeded in his application to dispute the Two Month's Notice to End Tenancy for Landlord's Use. The notice is cancelled and of no further force or effect.

The tenant's application also sought an order to allow for a change of locks to the rental unit pursuant to section 31 of the *Act*. The issue of changing locks is discussed in Policy Guideline PG-7 [Locks and Access] which states:

*[the Residential Tenancy Act] recognizes that the common law respecting landlord and tenant applies. Therefore, unless there is an agreement to the contrary, entry on the property by the landlord should be limited to such reasonable activities as collecting rent, serving documents and delivering Notices of entry to the premises.*

...

*Where a tenant can prove that the landlord has entered contrary to the Residential Tenancy Act, the tenant may apply to have the locks to the rental unit changed. The arbitrator will consider, among other things, whether an order to change the locks on a particular suite door could endanger the safety of other nearby tenants. An order for change of locks will only apply to areas where the tenant has exclusive possession. In some circumstances, where there has been substantial interference with the tenant's use and enjoyment of the property, it may be appropriate for the tenant to be awarded damages for unlawful entry in addition to, or rather than, a change of locks.*

The tenant has provided undisputed testimony to satisfy me the landlord has, on more than one occasion, entered the tenant's unit without providing notice as required by section 29 of the *Act*. A tenant's right to quiet enjoyment includes the right to reasonable privacy, free from unreasonable disturbance. I find the landlord's entry into the tenant's unit to be a fundamental breach of the tenant's right to quiet enjoyment as protected by section 28 of the *Act*. As such, I order that the tenant be given the authority to change the lock to the rental unit pursuant to section 31 of the *Act*.

The landlord is to pay the cost to change the lock, to a maximum of \$200.00. Pursuant to section 72, the tenant shall be entitled to deduct the cost of the lock change (a maximum of \$200.00) from a single rent payment upon providing a copy of the receipt

for the lock change to the landlord. The tenant is not required to provide a copy of the key to the landlord.

Conclusion

The Two Month's Notice to End Tenancy for Landlord's Use is cancelled and of no further force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may change the lock to the rental unit pursuant to section 31 of the *Act*. Pursuant to section 72, the tenant may deduct the cost of the lock change from a single rent payment, to a maximum of \$200.00, upon providing a copy of the receipt to the landlord.

The tenant is not required to provide a copy of the key to the landlord.

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: October 07, 2021

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Residential Tenancy Branch