



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL DRI FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated August 31, 2021 (2 Month Notice), to dispute a rent increase, and to recover the cost of the filing fee.

The tenant, landlord DG (landlord) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The hearing process was explained to the parties. Although a landlord agent, SM (agent) attended the hearing, it was determined that the agent was not necessary, and the agent disconnected from the hearing.

As both parties confirmed having received and reviewed documentary evidence from the other party, I find the parties were sufficiently served. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the tenant and counsel confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Rule 2.3 of the RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 2 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 2 Month Notice and for the filing fee at this proceeding. The tenant is granted leave to reapply for their request to dispute a rent increase.

#### Issues to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

#### Background and Evidence

There is no dispute that a written tenancy agreement does not exist between the parties. The tenant testified that the tenancy began in 2008. The parties agreed that monthly rent is \$1,600.00 per month and is due on the 20<sup>th</sup> day of each month. Counsel submits that the landlord purchased the property and inherited the tenancy in 2012 or 2013.

The tenant confirmed that they received the 2 Month Notice on August 31, 2021. The tenant filed to dispute the 2 Month Notice on September 3, 2021. The tenant raised the issue of good faith by stating that the landlord listed the property for sale between July 2021 and when the 2 Month Notice was served late August 2021. The landlord confirmed that the sale listing was cancelled in November 2021 but was unsure if the "For Sale" sign was still on the property at the time of the hearing on January 17, 2022. The tenant testified that the "For Sale" sign is still on the rental property.

Counsel submits that the landlord changed their mind to sell the rental property and instead wanted to move in due and that by November 2021 the landlord cancelled sale listing of the rental property.

Both counsel and the landlord were asked if there was any documentary evidence such as emails or texts or other documentation to support that the landlord had changed their mind and wanted to move into the rental unit before the 2 Month Notice was issued. Both counsel and the landlord confirmed there was not, and that the landlord's affirmed testimony was the evidence they were relying on, in addition to cancelling the sale listing in November 2021.

The parties were advised that I did not need to hear any additional evidence as I found the timelines provided did not prove good faith by the landlord, which I will address below.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find the tenant filed their application on time to dispute the 2 Month Notice as the tenant received the 2 Month Notice on August 31, 2021 and disputed the 2 Month Notice on September 3, 2021, which is within the 15-day timeline to dispute the 2 Month Notice.

When a tenant disputes a 2 Month Notice on time, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition, when a tenant has filed to cancel a 2 Month Notice and call into question the "good faith" requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an **honest intention, with no ulterior motive to end the tenancy.**

I have considered the testimony of both parties and find that to wait between August 31, 2021 and November 2021 to cancel a sale listing when the landlord claims they are planning to move into the rental unit to occupy it, **is not reasonable timing** and that the landlord had an ulterior motive and that the notice was issued in bad faith. As a result, I afford the testimony of the landlord very little weight as I find that if the landlord had actually intended to move into the rental unit when the 2 Month Notice was served, the sale listing would have been cancelled either before, at the same time of, or very shortly

after the 2 Month Notice was served, and not two months later. Furthermore, as the hearing was held on January 17, 2022, which is two months after the sale listing was supposed to be cancelled, I find it unreasonable that the landlord would not be aware whether the “For Sale” sign was still on the rental property, given that tenant disputed the 2 Month Notice in September 2021.

On the balance of probabilities, I find it more likely than not that the landlord issued the 2 Month Notice in bad faith and with an ulterior motive. Consequently, **I cancel** the 2 Month Notice dated August 31, 2021.

The 2 Month Notice is of no force or effect.

**I ORDER** the tenancy to continue until ended in accordance with the Act.

As the tenant’s application was successful, I grant the tenant a one-time rent reduction in the amount of **\$100.00** in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 62(3) and 72 of the Act.

**I CAUTION** the landlord not to issue any future notices with an ulterior motive.

### Conclusion

The tenant’s application is successful.

The 2 Month Notice is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act.

The tenant is granted a one-time rent reduction in the amount of \$100.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 62(3) and 72 of the Act.

This decision will be emailed to both parties.

The landlord has been cautioned.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 17, 2022