



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDCT, RR, RP, LRE, LAT, OLC

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The Tenant applied for:

- an order to cancel a Two Month Notice for Landlord's Use, dated October 15, 2021 (the Two Month Notice);
- compensation for monetary loss or other money owed;
- an order to reduce rent for repairs, services, or facilities agreed upon but not provided;
- an order for repairs made to the unit, having contacted the Landlord in writing;
- an order to suspend or set conditions on the landlord's right to enter the rental unit;
- authorization to change the locks to the rental unit; and
- an order for the Landlord to comply with the Act, regulation, and/or tenancy agreement.

Attending the hearing were the Tenant, and the two Landlords, who are mother (CH) and son (MH). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified they served the Notice of Dispute Resolution Proceeding (NDRP) on the Landlords by registered mail on November 6, 2021, and served their evidence on December 16, 2021, also by registered mail. The Landlords confirmed they received the documents. I find the Tenant served the Landlords in accordance with section 89 of the Act.

The Landlords testified they served their responsive evidence on the Tenant by posting it to the door on December 24, 2021. The Tenant confirmed receipt of same. I find the Landlords served their responsive evidence on the Tenant in accordance with section 88 of the Act.

### Preliminary Matter

The Residential Tenancy Branch Rules of Procedure 2.3 states:

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they are not related to the central issue of whether the tenancy will continue, I dismissed all of the Tenant's claims, except for the dispute of the Two Month Notice.

### Issues to be Decided

Is the Tenant entitled to an order cancelling the Two Month Notice? If not, is the Landlord entitled to an order of possession?

### Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on August 1, 2018, rent is due on the first of the month, and the Tenant paid a security deposit of \$1,250.00, which the Landlords still hold.

The parties disagreed on how much rent is, which appears to stem from a disagreement regarding the duration of a rent reduction related to repairs. The Tenant stated they are paying \$2,100.00 in rent, as the Landlords agreed to it; the Landlords dispute this, stating rent is \$2,200.00.

The Two Month Notice indicates the tenancy is ending because the Landlord or the Landlord's spouse will occupy the unit.

The Landlords testified they served the Two Month Notice on the Tenant by registered mail on October 26, 2021, and by posting it to the door on October 27, 2021. The Tenant testified they received the Two Month Notice on an unknown date.

Both parties provided extensive testimony and evidence illustrating a complex, long-term conflict around repairs, the Tenant moving out to allow for repairs to be done, the Tenant providing access to the unit to allow repairs to be done, and multiple notices to end tenancy being served on the Tenant by the Landlords.

MH testified that he and his mother, CH, had been living together, but as MH's girlfriend has moved across country to join him, CH has moved out to give the couple some privacy. The Landlords provided as evidence a copy of an airline ticket, dated December 13, 2021, which they testified was from MH's girlfriend's move.

The Landlords testified that CH moved out of the home they were sharing, and is living with a friend temporarily until she can move into the subject rental unit. MH referred to a letter from a property manager, dated December 20, 2021 and submitted as evidence, which states that CH has been living at a named address since December 1, 2021, as she is waiting to move back into her own property, the subject rental unit.

The Landlords submitted as evidence a written statement from MH, dated December 13, 2021, in which he states he currently lives with his mother, and that for privacy reasons, in January 2022, his mother will move to [the subject rental property].

The Tenant testified that the Landlords are not acting in good faith. The Tenant testified regarding ongoing issues getting numerous repairs done in the unit, beginning with a water leak in January 2020, and that when they requested repairs done, the Landlords would serve the Tenant with a notice to end tenancy.

The Tenant submits they were served Two Month Notices by the Landlords as follows:

- **May 2020:** After the Tenant asked the Landlords to complete repairs, the Landlords served her with a Two Month Notice.
- **June 2020:** After the Tenant again requested that repairs be done, the Landlord served a Two Month Notice.
- **Sept 2020:** After the Tenant informed the Landlords she would file a dispute with the Residential Tenancy Branch regarding the outstanding repairs, the Landlords again served a Two Month Notice.

- **October 2021:** After the Tenant asked the Landlords, in October, to complete repairs during December 2021, the Landlords served her with a Two Month Notice.

The Landlords testified that during the pandemic, as the Tenant and her family had not been vaccinated, the Tenant repeatedly refused the Landlords entry to the unit to conduct inspections to evaluate the repairs needed, and refused entry to workers. Both parties submitted as evidence records of translated text exchanges between the parties, which documents the Tenant repeatedly denying access.

The Tenant testified that she had allowed workers to enter the rental unit, including allowing a series of 15 worker to enter the rental unit after the January 2020 water leak. The Tenant submitted translated text messages with CH, in which, in May 2020, they ask CH to arrange for repairs to be done. CH replies that, due to the pandemic, the repairs cannot be done at that time. The Tenant submitted as evidence translated text messages in which, numerous times, she asks the Landlords to complete repairs.

### Analysis

Based on the testimony of the parties, I find the Landlords served the Two Month Notice on the Tenant by registered mail on October 26, 2021, and by posting it to the door on October 27, 2021. Under section 90 of the Act, I deem it received by the Tenant on October 30, 2021. I find the Landlords served the Tenant in accordance with section 88 of the Act, and that the Two Month Notice meets the form and content requirements of section 52.

The standard of proof in a dispute resolution is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. And, as noted in Residential Tenancy Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member*, when the issue of a dishonest motive or purpose for ending the tenancy is raised by a tenant, the onus is on the landlord to establish they are acting in good faith.

Policy Guideline 2A explains that good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to

defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the Act or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant, under section 32(1) of the Act.

I accept the Tenant's submissions and affirmed testimony that there is an established pattern of the Landlords serving the Tenant with a Two Month Notice after the Tenant asks for repairs to be completed, including May 2020, June 2020, September 2020, and October 2021.

I accept the documentary evidence, submitted by the Landlords, consisting of written statements from a property manager, and MH, respectively, in which the first states that CH made alternate housing arrangements since December 1, 2021, and the second states that, as of December 13, 2021, CH is still living with MH, and will move out for January 2022.

Both the pattern of the Landlords serving Two Month Notices on the Tenant, and the discrepancy in the evidence submitted by the Landlords, as noted above, call into question their claims that CH will move into the rental unit, and that the Landlords are acting in good faith.

Taking into careful consideration all the oral and documentary evidence presented, and applying the law to the facts, I find on a balance of probabilities that the Landlords have not met the onus of proving the reason for the Two Month Notice, nor that they are acting in good faith.

### Conclusion

The Tenant's application is granted.

The Two Month Notice for Landlord's Use is cancelled; the tenancy will continue 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: January 26, 2022

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Residential Tenancy Branch