



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, LRE, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 12, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated September 30, 2021;
- an order restricting or suspending the Landlord's right to enter; and
- an order granting the return of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the Landlord acknowledged receiving the Tenant's Application and documentary evidence. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The Landlord provided documentary evidence to the Residential Tenancy Branch in response to the Application. During the hearing, the Landlord stated that he did not serve a copy of the evidence to the Tenant.

### Preliminary Matters

Section 88 of the Act stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

According to the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), 3.16 Respondent's proof of service indicates; at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that the Landlord did not serve the Tenant with a copy of his documentary evidence; therefore, the only evidence I will consider from the Landlord is their oral testimony during the hearing.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the Application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the Two Month Notice dated September 30, 2021. The Tenant's request for an order restricting the Landlord's right to enter the rental unit is dismissed with leave to reapply.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Two Month Notice, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on December 1, 2019. Currently, the Tenant pays rent in the amount of \$800.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$100.00 which the Landlord continues to hold. The tenancy is still ongoing.

The Landlord testified that he served the Tenant with a Two Month Notice to End Tenancy dated September 30, 2021 with an effective vacancy date of November 30, 2021 by posting it to the Tenant's door on September 30, 2021. The Tenant confirmed having received the Two Month Notice on October 1, 2021. The Landlord's reason for ending the tenancy on the Two Month Notice is;

*"All conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit"*

The Landlord stated that he sold the rental property to the Purchaser. The Landlord stated that the Purchaser did not ask the Landlord in writing to give the Two Month Notice to the Tenant. The Landlord stated that it was only a verbal conversation and that he suspects the Purchaser wants to move his son in the basement suite. The Landlord stated that the Purchaser has rented the upper portion of the home since the Landlord vacated the rental property following the sale of the property.

In response, the Tenant stated that she received a text message from the Landlord's wife on September 30, 2021 which states

*"the new buyers going to rent this whole house, so they want to rent it out the basement for \$1200. That's why my husband was asking you that if you want we can tell new buyers that you live with your boyfriend here so they won't problem you in the future, if you are ok with \$1200"*

The Tenant stated that she did not agree to the \$400.00 rent increase to stay in the rental unit. Furthermore, the Tenant stated that the Landlord served her with the Two Month Notice on the same date that she refused to pay the increased amount of rent.

The Tenant stated that the Purchaser nor their close family member intends to occupy the rental unit. Instead, it is their intent to re-rent the rental unit at a higher rent as indicated by the Landlord's wife in her text message to the Tenant.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 49 (5) A landlord may end a tenancy in respect of a rental unit if  
(a) the landlord enters into an agreement in good faith to sell the rental unit,  
(b) all the conditions on which the sale depends have been satisfied, and  
(c) **the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:**

**(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;**

**(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.**

The Landlord served the Tenant with the Two Month Notice on September 30, 2021 with an effective vacancy date of November 30, 2021. The Tenant confirmed having received the notice on October 1, 2021. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

In this case, I find that the Landlord provided insufficient evidence to demonstrate that the Purchaser asked the Landlord, in writing, to give notice to end the tenancy. I find that the Tenant provided sufficient evidence to demonstrate that the same day the Landlord served the Two Month Notice, the Landlord's wife had offered the Tenant the opportunity to continue the tenancy on the basis that she pays \$1,200.00 rent rather than \$800.00. I find that it is more likely than not that the Purchaser's intent is to re-rent the rental unit rather than occupy for their own use. I find the Two Month Notice was served in bad faith.

In light of the above, I cancel the Two Month Notice, dated September 30, 2021. I order the tenancy to continue until ended in accordance with the Act.

As the Tenant has been successful, I find she is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from the next month's rent.

Conclusion

The Tenant's application is successful. The Two Month Notice issued by the Landlord dated September 30, 2021 is cancelled. The tenancy will continue until ended in accordance with the Act.

The Tenant is entitled to deduct \$100.00 from the next month's rent for recovery of the filing fee.

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: February 24, 2022

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Residential Tenancy Branch