



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, CNL, DRI, FFT

### Introduction

The Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution (the “Application”) on September 15, 2021 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). They also seek the Landlord’s compliance with the legislation and/or the tenancy agreement, to dispute a rent increase, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 28, 2022.

Both parties attended the conference call hearing. At the outset, I reviewed disclosure of evidence that the Tenant provided in advance. On the basis of the Landlord’s confirmation that they received this, I proceeded with the hearing.

### Issues to be Decided

Is the Tenant entitled to a cancellation of the Two Month Notice?

Should the Tenant be unsuccessful in seeking to cancel the Two Month Notice, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the Tenant entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

### Background and Evidence

The Tenant submitted a copy of the tenancy agreement. This shows the start of the tenancy on September 1, 2018 with the rent amount at \$3,300. The parties signed the agreement with the previous landlord and not the Landlord here who came on in August 2021. The actual tenancy started in 2016. This set the fixed-term at one year until August 31, 2019, to be continued on a month-to-month basis after that time.

The Landlord issued the Two-Month Notice to the Tenant on September 10, 2021. The Tenant confirmed they received the document attached to their door. This provided the move-out end-of-tenancy date as December 1, 2021. The second page of the document shows the Landlord's indication that "the child of the landlord" will occupy the rental unit.

The arrangement was for the Tenant to have the house itself, the garage, sheds, "all out buildings and entire property front and back." The former Landlord attested to this by way of a letter dated August 30, 2021, included in the Tenant's evidence. When they sold the property on August 28, 2021, a clause in the purchase agreement specified that the Tenant would be able to continue to reside there.

In the hearing, the Landlord presented that they bought the property for their child, who was currently renting elsewhere and operates a small business necessitating the need for more space. They explained how after their purchase, they attempted to communicate with the Tenant about their needs; however, the Tenant would not allow the Landlord entry. After this, the Landlord's real estate agent issued the Two-Month Notice. In another discussion, the Landlord proposed the Tenant could have more time before ending the tenancy; however, the Landlord offered this with the condition that they would be able to use a shed on the property. The Tenant did not accept this arrangement and insisted that the situation would not change in the interim, prior to this hearing.

In response to the Landlord's submissions, the Tenant reiterated that the contract of purchase and sale contains the specific clause stating, "the existing tenants will be retained". They presented there was a discussion with the Landlord on September 8 wherein the Landlord stated, 'you're very good tenants and can stay . . . we just want the shed.' In their written timeline, the Tenant described this as the Landlord stating their need for each of the outside buildings. The Tenant explained their need for tools

and the space they have been using the entire time during the tenancy; this was the chief reason they rented this property.

After this, the Landlord issued the Two-Month Notice.

The Tenant then recalled that visitors arrived on December 1 to view the rental unit. These visitors told the Tenant the Landlord informed them that the rental unit would be coming up for rent and they visited to view the unit from the outside. When the visitors left, the Tenant messaged the Landlord to inquire; the Landlord's response in the evidence shows those visitors came to inquire on a "learning program".

The Tenant also presented their evidence showing the Landlord proposed they could continue the tenancy, albeit with an increased rent amount. These were copies of messages from the Landlord dated November 11. The Tenant submits these reveal the Landlord entering negotiations for the Tenant's stay; therefore, the Two-Month Notice was issued in bad faith. One message states: "I will give you garage 4700 Without garage 4000 till Jan or feb We can [start renovation] after". The second reads: "And if you want to [remain] longer I charge you for house only 4000 But we need to replace carpet with Laminate floor." On December 1, the Tenant conveyed information to the Landlord regarding legal ways of increasing rent.

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### Analysis

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice "if a landlord or close family member of the landlord intends in good faith to occupy the rental unit." Following this, s. 55 provides that I must grant to the Landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the Tenant's Application or uphold the Landlord's notice.

In this matter, the Landlord bears the onus to prove the reason for ending the tenancy is valid and undertaken in good faith. I am not satisfied that the Landlord's need for the rental unit, as indicated on the Two-Month Notice, is legitimate.

The messaging and communication with the Tenant reveal the Landlord is flexible on their plans; this undermines what the Landlord indicated on their notice. I find that subsequent to the Two-Month Notice the Landlord entered into a process of negotiation with the Tenant for an increased amount of rent with less areas on the property available to the Tenant. This contrasts with what is indicated on the Two-Month Notice to be their need for the family member's use of the rental unit.

I find this was not a matter of bad faith with regard to underlying motives from the Landlord. I see the Landlord attempting to reach a compromise to alleviate hardship against the Tenant while still looking out for their own family member's best interests with respect to that family member's payment of rent elsewhere. A more basic approach to consider is whether the Landlord intended to do what they said they were going to do by ending the tenancy for their family member's use. With negotiation on use of the other areas of the property, while keeping the Tenant present, I find that the Landlord's intention became obscured, affecting the validity of the Two-Month Notice. In the hearing the Landlord stated they tried to compromise, with the idea being the Tenant would find another arrangement by February. I find this invalidates the Two-Month Notice where the Landlord set a firm date for the end of tenancy so their family member could use the property.

While the motive for doing so may have been genuine, the impact of a higher amount of rent is something more severe. With this proposition put out there by the Landlord some two months after service of the Two-Month Notice, it appears the Landlord's true intention of having a family member occupy the rental unit shifted even further.

In sum, I find the Landlord's intention in serving the Two-Month Notice was not fully in place. Their negotiation on the full use of the property, and then the price, reveals their intention for the family member's occupancy was not there when they served the Two-Month Notice to the Tenant on September 10, 2021.

I find the original tenancy agreement includes all of the structures on it. There is nothing preventing the Tenant from enjoying full use for which they pay rent each month. As per the *Act* s. 28(c), the Tenant has exclusive possession of all areas. The Landlord is thus bound to comply with this important provision. Simply put, the

agreement is for all areas and structures on the property, and not subject to different arrangements for different pieces.

Though the Tenant disputed a rent increase, I find the amount was only proposed by the Landlord. They did not implement this as a rent amount going forward, and they did not attempt to end the tenancy for reason of non-payment of this higher amount rent. I dismiss this piece for the Tenant's Application for this reason.

For the reasons listed above, the Two-Month Notice issued on September 10, 2021 is cancelled and the tenancy will continue. As the Tenant was successful in this Application, I find they are entitled to recover the \$100 filing fee. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

### Conclusion

For the reasons above, I order that the Two-Month Notice issued by the Landlord on September 10, 2021 is cancelled. The tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 8, 2022

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Residential Tenancy Branch