



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL, OLC**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to comply with the Act pursuant to section 62;

The landlord BS attended with his spouse and agent JL. The tenants ("the tenant") attended and called VB as a witness to provide affirmed testimony.

All parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

### *Service*

The landlord acknowledged receipt of the Notice of Hearing but denied receipt of the tenant's materials.

The witness VB provided affirmed testimony with respect to service. VB testified she is the tenant's social worker. The tenant's family consists of two adults, a child and an infant. VB testified she assisted the tenant family with the tenancy issues and is familiar with the background of this dispute.

VB testified she instructed a colleague at her employment to serve the landlord with the tenant's materials. She was informed by the colleague and believed the landlord BS

was personally served on October 18, 2021, after attempting to evade service by denying his identity.

VB testified that the evidence served upon the landlord included the tenant's evidence package which contained a letter from VB dated October 18, 2021. The witness VB remained available throughout the hearing although the tenant JM primarily provided testimony.

Given the credible testimony of the tenant and the witness VB, I find service of their materials took place as testified. Accordingly, pursuant to section 89, I find the tenant personally served the landlord with their evidence on October 18, 2021.

The hearing proceeded.

### *Agreement*

During the hearing, the landlord agreed to provide the tenant with the following by March 1, 2022, which shall be ordered:

1. Copy of lease agreement;
2. Copies of receipts for all payments.

### *1. Preliminary Issue*

At the commencement of the hearing, I advised the parties that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that 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.

The tenant's application included unrelated claims in addition to the tenant's application to dispute the landlord's Notice. I find that the tenant's primary application pertains to disputing a notice to end tenancy; therefore, I find that the additional claims are not related to whether the tenancy continues.

Thus, the tenant's claims, except for the tenant's application to dispute the landlord's Notice, are dismissed with leave to reapply. I make no findings with respect to these claims.

I grant the tenant liberty **to reapply** for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

## *2. Preliminary Issue*

Section 55 of the *Act* requires that when a tenant applies 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually, the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where the tenant has applied to cancel a landlord's One Month Notice, the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the Notice and seeks to end the tenancy.

### Issue(s) to be Decided

Is the tenant entitled to:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49

### Background and Evidence

The parties agreed as follows. The tenancy began on September 1, 2020. The unit is a basement apartment, and the landlord lives in a separate home.

The parties entered into a verbal tenancy agreement. The landlord agreed to provide a tenancy agreement in the RTB form to the tenant by March 1, 2022.

The parties agreed that rent is \$1,200.00 monthly payable on the first of the month. The tenant paid a security deposit of \$600.00 which the landlord holds. The landlord agreed to provide all receipts for rent and the security deposit to the tenant by March 1, 2022.

The tenant testified as follows. The tenant family consists of two adults and their two children.

The parties agreed that on September 27, 2021, the tenant sent the landlord an email informing them they were concerned about the presence of mold in the unit.

The parties agreed that on September 29, 2021, the landlord posted a Two Month Notice to the tenant's door. A copy of the Two Month Notice was submitted as evidence which is in the standard RTB form. The effective date of the notice is December 1, 2021. While one box on the standard form was inadvertently not checked, the parties agreed to their common understanding that the reason for issuance was that the unit will be occupied by the landlord.

The tenant filed an Application for Dispute Resolution on October 5, 2021.

The tenant testified that on September 27, 2021, the tenant sent an email to the landlord with concerns about the presence of black mold in the unit. There was no prior discussion to the landlord wanting to occupy the unit. The Two Month Notice was posted on September 29, 2021. The tenant testified to belief that the Notice was issued because of the tenant's concerns about mold and not because the landlord had a genuine good faith intention to move in to the unit.

The landlord disagreed with the tenant's version of events and testified that the landlord informed the tenant two days before September 27, 2021 that the landlord had mobility issues in his current residence and wanted to move in to the unit. The landlord stated that the issuance of the Notice had nothing to do with the tenant's concerns about mold.

The tenant requested the Notice be cancelled as the landlord did not issue it in "good faith" but to get rid of a troublesome tenant.

The landlord asserted he genuinely wanted to move in to the house and requested an Order of Possession.

### Analysis

To evict a tenant for landlord's use of the property, the landlord has the burden of proving the reasons on the Notice. The parties had contrasting narratives which were provided in detail in the 67-minute hearing. While I have turned my mind to the documentary evidence and the testimony, not all details of the submissions and

arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

The tenant raised the issue of the intention of the landlord. The tenant questioned whether the landlord's plan to occupy the unit was genuine. The tenant expressed a lack of confidence in the landlord's stated plan that the purpose of the Notice was to allow the landlord to occupy the unit. The tenant argues the landlord issued the notice in retaliation for the tenant's expressed concern about mold in the unit.

The tenant asserts that the landlord has not issued the Two Month Notice in good faith but instead simply wants to get rid of the tenant.

*The Residential Tenancy Branch Policy Guideline # 2 states good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Two Month Notice.*

This Guideline reads in part as follows:

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.*

The tenant has raised the good faith intention of the landlord which I find has some basis. In assessing the tenant's credibility, I found the tenant persuasive, matter of fact and believable. The tenant's version of events was supported by the evidence. Where the parties' testimony differs, I give greater weight to the tenant's version of events.

I find I do not find the landlord's evidence credible that the issue of the landlord moving in was discussed before the tenant sent the email about possible mold. I accept the

tenant's testimony that the parties did discuss the landlord's request to move in before the email. The timing of the Two Month Notice so quickly after communication about possible mold, raises doubts about the bona fide intentions of the landlord.

While the landlord provided some explanation about the reason for issuing the Notice, I find that I am not wholly convinced that there are no other factors which have given rise to the Notice. The landlord did not provide any supporting evidence of plans to occupy the unit.

While the landlord may intend to use the rental unit for the purposes stated on the Two Month Notice, there may be additional reasons fueling the issuance of the Notice. Therefore, I find that the good faith argument has merit. I find there are reasonable doubts about the intention of the landlord to occupy the unit at the end this tenancy.

Therefore, the Two Month Notice is cancelled. This tenancy will continue until it is ended in accordance with the *Act*.

### Conclusion

The tenant's application to cancel the Two Month Notice is allowed. The Two Month Notice has no continuing force or effect. This tenancy will continue until ended according to 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: February 18, 2022

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Residential Tenancy Branch