



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNL, FFT, OLC, RP, DRI**

### **Introduction**

This hearing was scheduled to deal with a tenant's application to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), among other things.

Both parties appeared for the hearing and the parties were affirmed.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed the tenants served their hearing materials upon the landlord and I admitted their materials for consideration in making this decision. I confirmed that the landlords had not submitted or served any evidence prior to the hearing and they intended to provide their position orally during the hearing.

The landlord's last name was amended, with consent, to reflect the correct spelling of his name.

Since the tenants indicated they were seeking a number of remedies in a single application, I canvassed the parties with a view to determining the primary issue. Both parties were in agreement that the dispute concerning the 2 Month Notice was the primary issue to resolve. As such, I determined it necessary and appropriate to proceed to resolve the dispute concerning the 2 Month Notice and I severed the tenant's other remedies, with leave to reapply, pursuant to Rule 2.3 and Rule 6.2 of the Rules of Procedure which provide:

### **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.

### **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the 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.

During the hearing, I orally provided my decision to the parties. Although the tenants were successful, because I found the 2 Month Notice unenforceable since it did not meet the form requirements of the Act, the landlords requested that a mutual agreement be explored. The tenants did not have an appetite to enter into a mutual agreement to end tenancy at this time. The landlord requested that I record that the landlords were agreeable to reaching a mutual agreement to end tenancy.

### Issue(s) to be Decided

1. Should the 2 Month Notice be upheld or cancelled?
2. Award of the filing fee.

### Background and Evidence

The tenancy started approximately seven years ago with the former landlord. The current landlords purchased the property approximately four years ago and inherited this tenancy. The tenants are required to pay rent of \$700.00 on the first day of every month.

On December 3, 2021 the landlord personally served the tenant with the subject 2 Month Notice. The 2 Month Notice was signed by the landlord on December 1, 2021 and has a stated effective date of February 1, 2022. The 2 Month Notice is an old two-page form that was approved by the Director in 2016. On the second page of the 2 Month Notice the reason for ending the tenancy is as follows:

| REASON FOR THIS TWO MONTH NOTICE TO END TENANCY (check the box that applies) |   |
|--|---|
| <input checked="" type="checkbox"/>  | The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). |

The tenants filed to dispute the 2 Month Notice within the time limit for doing so.

During the hearing, the landlord referred to by initials NGS stated he intends to occupy the rental unit. The tenant testified that they had been told previously that it would be the landlord's father who intended to move in and now it has changed to the landlord.

### Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

Section 52 of the Act provides requirements for giving a notice to end tenancy. As seen under section 52(d) and (e) a landlord's notice to end tenancy must provide the grounds for ending the tenancy and be in the approved form, among other things, to be effective. Below, I have reproduced section 52 of the Act (with my emphasis underlined):

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy.
  - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
  - (e) when given by a landlord, be in the approved form.

The Director has the authority to approve forms pursuant to section 10 of the Act and section 10(2) also provides that deviations from the approved form may be acceptable. Below, I have reproduced section 10:

### **Director may approve forms**

- 10** (1)The director may approve forms for the purposes of this Act.  
 (2)Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

The notice to end tenancy that is the subject of this proceeding was an older two page version approved in 2016 and not in the current approved form. The currently approved 2 Month Notice provides more information to parties over four pages, including greater details for ending the tenancy where the landlord or landlord's close family member intends to occupy the rental unit, as seen in the excerpt below:

| Reason for this Two Month's Notice to End Tenancy (check the box that applies) |   |
|--|---|
| <input type="checkbox"/>   | The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). |
| Please indicate which close family member will occupy the unit.                |   |
| <input type="radio"/>  | The landlord or the landlord's spouse   |
| <input type="radio"/>  | The child of the landlord or landlord's spouse  |
| <input type="radio"/>  | The father or mother of the landlord or landlord's spouse   |

In the form served to the tenants, there is no breakdown or indication as to whether it will be the landlord, or the landlord's spouse, parent, child that will be occupying the rental unit. Also, the tenant stated that she had heard varying explanations as to who would be moving into the rental unit. As such, I find the details that are not provided on the old form do affect its substance and I decline to further consider ending the tenancy based on the old form that is missing information that the tenants did not know for certain.

In keeping with the principles of natural justice, a person receiving an eviction notice is entitled to know the reason(s) and/or ground(s) for its issuance so that they may adequately prepare a response or defence. Also of significance, where a tenancy ends for landlord's use of property, a tenant may be entitled to additional compensation if the landlord does not use the rental unit for the stated purpose which further necessitates a requirement for the landlord to identify the intended occupant.

In light of the above, I find the 2 Month Notice dated December 1, 2021 is not in the approved form, and the lack of information or details on the old form affects its substance and may be prejudicial to the tenants. Therefore, I find the 2 Month Notice dated December 1, 2021 is unenforceable and I cancel it with the effect that this tenancy continues at this time.

Since I did make any findings as to whether the landlord has merit to bring the tenancy to an end for landlord's use due to the form used, the landlord is at liberty to issue another 2 Month Notice, in the approved form, to the tenants if the landlord decides to pursue eviction.

The tenants were successful in having the 2 Month Notice cancelled and I award the tenants recovery of the \$100.00 filing fee they paid.

### Conclusion

The 2 Month notice was cancelled as it is not in the approved form. The landlord is at liberty to issue another 2 Month Notice, in the approved form.

The tenants are awarded recovery of the \$100.00 filing fee. The tenants are authorized to deduct \$100.00 from a subsequent month's rent and in doing so the landlord must consider the rent to be paid in full.

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 11, 2022

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Residential Tenancy Branch