



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Tenant applied on January 27, 2022 for:

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 26, 2021 (the Two Month Notice);
- an order for the Landlord to comply with the Act, regulation an/or the tenancy agreement; and
- the filing fee.

The Tenant and Landlord were present and 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 he served the Landlord the Notice of Dispute Resolution Proceeding (NDRP) and his evidence by registered mail on or around February 10, 2022; the Landlord confirmed she received the documents. I find the Tenant served the Landlord in accordance with section 89 of the Act.

The Landlord testified she did not serve responsive evidence on the Tenant.

### Preliminary Matter

Regarding the Tenant's claim for an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement, in response to the instruction to "Please describe what you want the landlord to comply with and why," the Tenant wrote: "At this

time one of your agents said I should first deal with the eviction and not worry about their breach of the lease agreement for now.” As the Tenant did not clearly identify what was being sought in this claim, I dismiss it with leave to reapply.

### Issues to be Decided

- 1) Is the Tenant entitled to an order cancelling the Two Month Notice?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Is the Tenant entitled to the filing fee?

### Background and Evidence

The parties agreed on the following aspects of the tenancy. It began in 2007, under a different landlord. The current Landlord purchased the property in 2016; rent is \$800.00, due on the first of the month, and the Tenant paid a security deposit of \$400.00, which the Landlord still holds.

A copy of the Two Month Notice was not submitted as evidence by either party. The Tenant advised he received the Notice, dated January 26, 2021, on January 26, 2022, in person. The Landlord testified the year on the Notice was an error, and that it had been signed in January 2022.

When I asked to review the details of the Two Month Notice with the Landlord, and invited both parties to upload a copy of the Notice for my consideration, the Landlord testified she did not have a copy of the Notice, as the original had been given to the Tenant.

### Analysis

Section 49 of the Act allows a landlord to give notice to end a tenancy for the landlord's use of the property.

Section 49(7) of the Act includes that a notice to end tenancy for landlord's use must comply with section 52 *[form and content of notice to end tenancy]*.

Rule of Procedure 6.6 states:

**6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing 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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

An important part of the Landlord proving the reason for the Two Month Notice is proving a valid Notice was issued.

The Landlord has not produced a copy of the Notice, so I cannot determine whether it complies with section 52 of the Act.

Therefore, I cancel the Two Month Notice, as I find the Landlord has not met the burden of proving the reason they wish to end the tenancy.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant is successful in his application, I order the Landlord to pay the \$100.00 filing fee the Tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the Tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The Tenant's application is granted; the Two Month Notice 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: May 16, 2022

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Residential Tenancy Branch