



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 611614 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, MNDCT, OLC, RR, DRI, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for the following:

1. an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use, dated Jan 27/22 ("Two Month Notice");
2. an Order for the Landlord to Comply with the Act or tenancy agreement;
3. a Monetary Order of \$3,520.00 for damage or compensation under the Act;
4. an Order to reduce the rent for repairs, services or facilities agreed upon but not provided.
5. to dispute a rent increase from the Landlord; and
6. to recover the \$100.00 cost of her Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 50 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about it. During the hearing the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with her Notice of Hearing documents by Canada Post registered mail, sent on April 30, 2022. The Tenant testified that she served the Landlord with her evidence via registered mail sent on May 7, 2022. The Tenant provided Canada Post tracking numbers as evidence of service.

I checked these tracking numbers in the Canada Post website, which indicated that the registered mail packages were delivered to the Landlord or available for pickup on May 10, 2022, and May 16, 2022, respectively. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. However, I find that the Tenant's evidentiary submissions were not delivered to the Landlord in compliance with Rule 3.15, which states: "...the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing." [emphasis added]

Therefore, I will not consider the Tenant's evidence in this proceeding, aside from her testimony.

#### Preliminary and Procedural Matters

The Tenant provided her email address in the Application and she confirmed it in the hearing. The Tenant also provided the Landlord's email address in the hearing, and she confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Before she testified, I advised the Tenant that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant had indicated different matters of dispute on the application, the most urgent of which is the claim to set aside a Two Month Notice. I told her that not all the claims on the Application are sufficiently related to be determined during this proceeding. I said I would, therefore, only consider the Tenant's request to set aside the Two Month Notice and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply.

### Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of her \$100.00 Application filing fee?

### Background and Evidence

The Tenant said that the Parties did not have a written tenancy agreement, but she said the periodic tenancy began in March or April of 2005. She said she currently pays the Landlord a monthly rent of \$900.00, due on the first day of each month. The Tenant said that she did not pay the Landlord a security deposit, nor a pet damage deposit.

Neither the Landlord nor the Tenant submitted a copy of the Two Month Notice; however, in the hearing, the Tenant said the Two Month Notice was signed and dated January 27, 2022, it has the rental unit address, it was served by placing it in the mail slot on January 27, 2022, and it has an effective vacancy date of March 31, 2022. The Tenant said that the Landlord checked a box on the Two Month Notice indicating that it was served on the ground that a child of the Landlord or the Landlord's spouse will occupy the rental unit. However, the Landlord did not attend the hearing to present the merits of the Two Month Notice.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 (3) of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49 of the Act also defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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.

[emphasis added]

Accordingly, I find that the Landlord has the burden of proving the validity of the Two Month Notice on a balance of probabilities. Given that the Landlord did not attend the hearing, I find he has not met his burden of proof in this matter.

I, therefore, cancel the Two Month Notice and find that it is void and unenforceable. The Tenant is successful in her claim to cancel the Two Month Notice. The Tenant's other claims are dismissed with leave to reapply.

As **a note to the Tenant**, contrary to what I suggested in the hearing, section 60 of the Act states that an Application for dispute resolution must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned. As such, the Tenant is not out of time for her other claims.

Given her success, the Tenant is awarded recovery of her **\$100.00** Application filing fee from the Landlord, pursuant to section 72 of the Act. I authorize the Tenant to deduct \$100.00 once from one upcoming rent payment in complete satisfaction of this award, pursuant to section 62 of the Act.

### Conclusion

The Tenant is successful in her Application to cancel the Two Month Notice, as the Landlord failed to attend the hearing to present the merits of this Notice; it was the Landlord's burden of proof to establish that the Two Month Notice was valid and enforceable. The Two Month Notice is now cancelled and is void and unenforceable.

The Tenant is awarded recovery of her **\$100.00** Application filing fee for this proceeding, and **she is authorized to deduct \$100.00 from one upcoming rent payment** once in complete satisfaction with this award.

The Tenant's other claims are dismissed with leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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 18, 2022

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Residential Tenancy Branch