



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDCT, RP, RR, CNL-4M, CNL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- Cancellation of a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit (the 4 month Notice), pursuant to section 49; and
- cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the 2 month Notice), pursuant to section 49.

This hearing was originally convened on May 13, 2022 and adjourned to June 03, 2022. This decision should be read in conjunction with the Interim Decision arising out of the May 13, 2022 hearing.

On May 13, 2022, tenant SA (the tenant), landlord TS (the landlord) and the landlord's advocate MY attended. On June 03, 2022, the same parties and the tenant's advocate NB attended the hearing.

At the outset of the hearings the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

The tenant served the amendment on March 25, 2022 at 1:20 P.M. by attaching it to the landlord's mailbox. The landlord confirmed receipt of the amendment.

Based on the testimony of both parties, I find the tenant sufficiently served the amendment and the landlord received it on March 25, 2022, per section 72(2)(c) of the Act.

I note that section 55 of the Act requires that when a tenant submits an Application 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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

#### Cancellation of the 4 month Notice

Both parties agreed the landlord served the 4 month Notice and the tenant received it on December 10, 2021.

The landlord cancelled the 4 month Notice and the tenant agreed with the cancellation of the Notice.

The claim for the cancellation of the 4 month Notice is now moot since the parties voluntarily agreed to cancel it.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for the cancellation of the 4 month Notice.

#### Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 2 month Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except the cancellation of the 2 month notice which will be decided upon.

### Issues to be Decided

Is the tenant entitled to cancellation of the 2 month Notice?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed that monthly rent is \$560.00, due on the first day of the month. The tenant affirmed the tenancy started on October 21, 1999. The landlord purchased the rental unit 14 years ago and she does not know when the tenancy started.

Both parties agreed the landlord served the 2 month Notice in person and the tenant received it on March 19, 2022. The tenant amended this application to dispute the 2 month Notice and continues to occupy the rental unit. The rental unit and the landlord's house are next door.

A copy of the 2 month Notice was provided. It is dated March 18, 2022 and the effective date is May 18, 2022. It states: "The rental unit will be occupied by the child of the landlord or landlord's spouse". The landlord served the Notice for her son MA to move in.

The landlord stated her 24-year-old son has been living in her basement since 2019. MA was unemployed and he got a part-time job in 2020 or 2021. MA has now been working longer hours and can afford to live on his own. The landlord believes that if MA can live in the rental unit, he will be more independent and still be close to the landlord. MA has been dating for one year and his girlfriend plans to live with him in the rental unit. MA could not attend the hearing because he is currently working.

The landlord testified she has a lung disease and MA has a cat. The landlord's health condition has worsened because of the cat. The tenant said MA has two cats and his girlfriend brought a third cat to the landlord's house. The landlord affirmed the cats have been living with her for one year.

The tenant does not believe MA plans to move in and the tenant believes the landlord is acting in bad faith.

The tenant could not see MA in the landlord's house and has been seeing MA more often recently. The landlord stated MA is a private person and the landlord cannot see the tenant often, as the front door of the landlord's house faces the back alley, and the front door of the rental unit faces the main street.

The landlord inspected the rental unit in December 2021 and served the 4 month Notice. The tenant submitted this application on February 09, 2022.

The tenant testified the landlord informed the tenant that she intended to cancel the 4 month Notice and asked the tenant to withdraw this application for dispute resolution. The tenant did not withdraw this application, as the tenant has claims for repairs, a monetary order and an order for the landlord to comply with the Act. The tenant believes the landlord served the 2 month Notice in retaliation because she did not withdraw this application. The tenant submitted into evidence the withdrawal letter:

This letter is my consent to you that I am / I am NOT withdrawing from the RTB-29 Notice Application for Dispute Resolution.

Tenant: NOT SIGNED

Landlord: signed

The landlord said she served the 4 month notice by mistake. The landlord asked the tenant to withdraw this application so the landlord did not need to serve the 2 month notice. The landlord inspected the rental unit on March 01, 2022 and served the 2 month Notice.

### Analysis

Section 49(8)(a) allows the tenant to dispute the Notice within 15 days after the date the tenant received it. As the tenant confirmed receipt of the Notice on March 19, 2022 and amended this application on March 25, 2022 to dispute the Notice, I find the tenant disputed the Notice within the timeframe of section 49(8)(a) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid. Furthermore, Residential Tenancy Branch Policy Guideline 2A states the landlord must demonstrate there is not an ulterior motive for ending the tenancy:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

The parties offered conflicting testimony about the 2 month Notice. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The landlord did not provide any documentary evidence to support her claim. The landlord did not call any witnesses.

Furthermore, I find the tenant's testimony is more convincing than the landlord's testimony. The landlord only provided testimony about the withdrawal letter after the tenant referenced it.

Based on the above, I find that the landlord has not met the onus to prove that her son intends, in good faith, to occupy the rental unit and the Notice was issued for ulterior motives. The 2 month Notice is therefore cancelled and of no force or effect. This tenancy will continue until it is lawfully ended in accordance with the *Act*.

### Conclusion

The Two Month Notice to End Tenancy for Landlord's use dated March 18, 2022 is cancelled and of no force or effect.

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: June 06, 2022

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Residential Tenancy Branch