



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

On April 5, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On April 13, 2022, this matter was set down for a hearing on July 29, 2022 at 9:30 AM.

The Tenant attended the hearing; however, the Landlord did not make an appearance at any point during the 17-minute teleconference. At the outset of the hearing, I informed the Tenant that recording of the hearing was prohibited and he was reminded to refrain from doing so. As well, he provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

The Tenant advised that he served the Landlord the Notice of Hearing and evidence package by registered mail on or around April 14, 2022. While he did not have a receipt to provide a tracking number or to confirm service, he solemnly affirmed that he had a conversation with the Landlord about this hearing approximately three weeks after the Notice of Hearing package was mailed. He testified that the Landlord was upset as she could not believe that he would dispute the Notice. Based on this solemnly affirmed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the

Landlord was, more likely than not, sufficiently served with the Tenant's Notice of Hearing and evidence package. As such, this evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the Landlord never created a written tenancy agreement, which is a requirement of the *Act*. However, he stated that the tenancy started on or around September 23, 2020, that rent was established at \$1,500.00 per month, and that it was due on the first day of each month. As well, he stated that a security deposit of \$750.00 was also paid.

He testified that the Notice was served by hand on or around March 31, 2022, and the

reason the Landlord served the Notice is because “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)”. In addition, the box indicating that “The landlord or the landlord’s spouse” would be occupying the rental unit was checked off.

He stated that the Landlord did not serve the entire Notice as only two pages of the four-page Notice were served. As such, this was not a complete Notice, and was invalid.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord’s right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

In reviewing the Notice that was submitted as documentary evidence, it is clearly incomplete as there were only two of the four pages served. I do not find that this complies with Section 52 of the *Act* as the entire approved form appears not to have been served. As well, I find it important to note that the additional two pages of the Notice that were not served contain important information for the parties, and without having these pages, I find that it could prejudice the Tenant. As such, I find that the Notice of March 30, 2022 is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month’s rent.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of March 30, 2022 to be 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: July 29, 2022

---

Residential Tenancy Branch