



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FFT

### Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 49 to cancel a Two-Month Notice to End Tenancy (the “Two-Month Notice”); and
- Return of her filing fee pursuant to s. 72.

B.S. appeared as the Tenant and was represented by her advocate, K.C.. G.G. attended as support for the Tenant and did not participate or provide evidence at the hearing.

C.D. appeared as agent for the Landlord and indicates he is a shareholder for the corporate Landlord. The Landlord was represented by counsel, K.O..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Landlord’s counsel advised that the Two-Month Notice was personally served on the Tenant on March 31, 2022. The Tenant acknowledges receipt of the Two-Month Notice on March 31, 2022. I find that the Two-Month Notice was personally served on the Tenant in accordance with s. 88 of the *Act* and was received on March 31, 2022.

The Tenant’s advocate advised that her application and evidence was served on the Landlord via registered mail. Landlord’s counsel acknowledges receipt of the Tenant’s application materials. I find that the Tenant’s application and evidence were served on the Landlord via registered mail in accordance with s. 89 of the *Act*.

Landlord's counsel confirmed that the Landlord served no evidence in response to the Tenant's application.

### Issues to be Decided

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

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit in 2011.
- Rent is currently payable in the amount of \$700.00 on the first day of each month.
- The Landlord holds a security deposit of \$350.00 in trust for the Tenant.

I was not provided with a copy of the tenancy agreement. However, Landlord's counsel advised that a copy of a written tenancy agreement was in her possession.

A copy of the Two-Month Notice was put into evidence with the Tenant.

I was advised by counsel that the Landlord is a numbered company in which C.D. is a shareholder with his parents.

Landlord's counsel advises that the subject residential property was purchased by the Landlord on March 17, 2022. I was further advised by counsel that C.D. lives in a neighbouring community with his parents and has a 1-to-2-year contract working in an area near to the subject rental unit. I am told that C.D. commutes approximately 50 minutes to 1-hour to his worksite. Landlord's counsel asserts that C.D. intends in good faith to occupy the rental unit.

The Tenant's advocate requested to ask questions of C.D., which Landlord's counsel agreed to permit. The Tenant's advocate directed C.D. to a notice of rent increase in the Tenant's evidence which is signed on March 18, 2022. C.D. was asked about the circumstances of the Tenant's receiving the notice of rent increase. C.D. advised that a notice of rent increase had been sent to all the current tenants at the residential property, including the Tenant. C.D. confirmed that the Tenant had disputed the rent increase and that the rent increase was issued on the Landlord's misunderstanding that her rent was \$750.00 per month rather than the \$700.00 she had been paying.

The Tenant's advocate asked C.D. if there were other rental units within the residential property that were currently vacant. C.D. confirmed that there is a vacant rental unit and that it has already been rented to another individual pulled off the waitlist. When asked whether the waitlist was created before after March 31, 2022, C.D. indicated that he was unsure as his parents created the waitlist.

C.D. later advised in the hearing that the rental unit was vacated in early June or July 2022. The Tenant emphasized that the rental unit was vacated sometime before May 31, 2022. The Tenant's advocate made submissions that the Tenant was not given an opportunity to move into the rental unit that had been vacated.

The Tenant's advocate argued that Two-Month Notice was issued in response to the Tenant disputing the notice of rent increase and argued that the current rent is well below market rates within the community. Landlord's counsel advised that most of the tenants within the residential property have been there for some time and that the Tenant's rent is within a similar range to the other tenants at the building.

The Tenant's advocate made an alternative argument that should I grant an order of possession, that the order be effective 4 months from now. The Tenant's advocate argued that the Tenant is of advanced age, is on a fixed-income, and would need sufficient time to find alternate accommodations given the tight rental market within the community. Landlord's counsel argued that the Tenant has had more than sufficient time to find other accommodations and that it has been nearly 5 months since the Two-Month Notice was served.

### Analysis

The Tenant looks to cancel the Two-Month Notice.

Pursuant to s. 49(7) of the *Act*, all notices to end tenancy issued under s. 49 must comply with the formal form and content requirements set out under s. 52. Section 52 of the *Act* states the following:

**Form and content of notice to end tenancy**

**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.

(Underline Added)

I have reviewed the Two-Month Notice. Though complying with most of the formal requirements set out under s. 52, the Two-Month Notice is signed but not dated. The Landlord did not make request or provide submissions with respect to amending the Two-Month Notice under s. 68 of the *Act*.

I find that the Two-Month Notice does not comply with the formal requirements of s. 52 of the *Act*. The language used in s. 52 is mandatory rather than permissive. The Two-Month Notice **must** be signed and dated when it was issued by the Landlord. That did not occur here. Again, the Landlord did not ask that I apply s. 68 to amend the Two-Month Notice.

As the Two-Month Notice failed to comply with the formal requirements under s. 52 of the *Act* and I was not asked to amend the notice, I find that it was not a proper notice issued under s. 49. Accordingly, I find that the Two-Month Notice is unenforceable and is of no force or effect.

The tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The Two-Month Notice is unenforceable and is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant was successful in her application. I find that she is entitled to the return of her filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenant's \$100.00 filing fee. I exercise my discretion under s. 72(2) of the *Act* and direct that the Tenant withhold \$100.00 from rent due to the Landlord on **one occasion** in full satisfaction of her filing fee.

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: August 16, 2022

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Residential Tenancy Branch