



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, OLC, RPP, MNDCT, FFT

### Introduction

On April 13, 2022, the Tenants 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* (the "*Act*"), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a return of personal property pursuant to Section 65 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Tenant D.A. advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on April 27, 2022, and proof of service was submitted as documentary evidence (the registered mail tracking number is noted on the first page of this Decision). The Landlord advised that she did not receive this package. When D.A. was asked what address she sent this package to, she stated that it was mailed to the service address that the Landlord supplied on the Notice. The Landlord confirmed that

this address for service was pre-populated for her by someone else and that she did not inform the Tenants to use a different address. Given that the Landlord provided the Tenants with this address for service, I am satisfied that the Tenants served this Notice of Hearing and evidence package in accordance with Sections 89 and 90 of the *Act*. As such, I find that the Landlord has been deemed to have received this package five days after it was mailed. Consequently, I have accepted this evidence and will consider it when rendering this Decision.

In addition, D.A. advised that she served their amendment to the Landlord, by regular mail, on July 26, 2022, to the same service address. The Landlord stated that she did not receive this either. As above, I am satisfied that the Landlord has been deemed to have received this Amendment five days after it was mailed.

The Landlord advised that she did not submit any documentary evidence for consideration on this file.

At the outset of the hearing, the parties were informed that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

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 is compliant with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?

- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants 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.

All parties agreed that the tenancy started on June 1, 2021, as a fixed term tenancy of one year ending on May 31, 2022. Rent was established at \$1,375.00 per month and was due on the first day of each month. A security deposit of \$687.50 was also paid, despite the tenancy agreement indicating that none was paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Landlord advised that she served the Notice by email on March 30, 2022, despite not having written agreement to serve documents via this manner. In addition, she testified that she went into the Tenants' rental unit and placed the Notice on the Tenants' kitchen table on that same day as well. She confirmed that neither her nor her property manager complied with the *Act* with respect to providing the proper written notice to enter the rental unit. However, the Tenants were given the beginning and end dates of the sale process, and for when she wanted to enter the rental unit to show it to prospective purchasers.

She stated that she had no knowledge of the specifics of what her property manager had communicated with the Tenants regarding entry to the rental unit, but she confirmed that there were no specific dates given for required access. She claimed that the Tenants gave "implied access" to the rental unit, from mid-March to March 30, 2022. She testified that, as the Tenants were in India at the time, she went into the rental unit to look at the condition of the rental unit, to clean up the rental unit and move property around to ready it for showings, and then to close and finalize the sale.

D.A. confirmed that they received the Notice on March 30, 2022 by email; however, they never consented to correspond via email, and this was the first time they ever received any email from the Landlord directly. As well she stated that Tenant A.J. came home on April 7, 2022 to find the Notice on their kitchen table. She acknowledged that she was in

India from March 3 to May 8, 2022 and that A.J. was in India from March 3 to April 7, 2022.

She testified that she received an email from the property manager on March 7, 2022, where she was told that the rental unit was for sale, and that it would be shown on March 17 and March 18, 2022. This person did not ask for access to the rental unit and it stated that parts of the rental unit would be cleaned for showings. She stated that she never granted the Landlord permission to enter the rental unit, but simply asked the property manager questions regarding this need/request for entry. She confirmed that the Landlord never provided any written notice for specific times, dates, or reasons for entry in accordance with the *Act*.

She advised that they had a motion activated camera in the rental unit and that someone entered the rental unit on March 9, 2022 and turned off their camera. As well, she referenced the witness statement submitted as documentary evidence which supports her position that someone entered the rental unit without authorization. She testified that on March 13, 2022, their property was removed by someone without their consent.

Moreover, she stated that she sent June 2022 rent to the Landlord, and she was told to send the rent to the new owner. She then paid rent to the new owner, and it was accepted after 10 days. As well, she stated that they have also paid July and August 2022 rent to the new owner.

### 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 all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord, in writing, to give this Notice because the purchaser or a close family member 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.

When reviewing the Notice, I am satisfied that the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on March 30, 2022 complies with the requirements set out in Section 52. Moreover, despite the manners with which the Landlord served the Notice that clearly did not comply with the *Act*, especially by going into the Tenants' rental unit and leaving it on the kitchen table, I am satisfied that the Tenants received this Notice as they disputed it within the legislated timeframe.

In considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. While the Landlord provided testimony with respect to why the Notice was served, she submitted no documentary evidence to support this testimony.

As the Landlord provided insufficient documentary evidence to corroborate why the Notice was served, I am not satisfied, on a balance of probabilities, that the Landlord has established compelling grounds to justify service of the Notice. Therefore, I find that the Notice of March 30, 2022 is cancelled and of no force and effect.

As an aside, the issues with respect to entry into the rental unit, a return of personal property, and claims for monetary compensation were severed, and little of this hearing was focussed on those issues as a result. However, it was evident that the Landlord had little knowledge of her rights and responsibilities under the *Act*, and it is possible that she relied on the guidance of her property manager for this. However, based on the Landlord's testimony, it appeared as if this person also had little knowledge of the *Act* as well.

I note that Section 29 of the *Act* outlines that the Landlord's right to enter rental unit is restricted based on the following criteria:

- 29** (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*

*(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*

*(i) the purpose for entering, which must be reasonable;*  
*(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*

*(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*

*(d) the landlord has an order of the director authorizing the entry;*

*(e) the tenant has abandoned the rental unit;*

*(f) an emergency exists and the entry is necessary to protect life or property.*

*(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).*

While the Tenants were aware that they would be required to make a separate Application for these severed issues, and while I am not making a definitive finding on any of these issues, it was fairly evident that the Landlord, or property manager, more likely than not did not comply with the *Act* with respect to entering the rental unit. The Landlord's claims of "implied access" are vague and dubious, and only further the likelihood that she failed to follow the *Act* with respect to entering the rental unit. Clearly, the Landlord likely used this approach to further her own interests solely, in an effort to benefit herself by expediting a sale of the rental unit. The Landlord is cautioned that she could be subject to claims for future compensation against her due to any potential breaches of the *Act* while she was the Landlord of the rental unit.

As a side note, the Landlord provided her service address to the Tenants during the hearing.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application. Given that the Landlord was responsible for serving this Notice, the Tenants will be granted a Monetary Order in this amount against the Landlord.

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 tenancy continues until ended in accordance with the *Act*.

In addition, I provide the Tenants with a Monetary Order in the amount of **\$100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 15, 2022

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Residential Tenancy Branch