



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DESIGN MARQUE PROPERTY  
MANAGEMENT and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNL, MNDCT, LRE, LAT, OLC, FFT**

### **Introduction**

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 11, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated April, 27, 2022;
- a monetary order for damage or compensation;
- an order restricting or suspending the Landlord's right to enter;
- an order authorizing the Tenant to change the locks of the rental unit;
- an order that the Landlord comply with the *Act*, tenancy agreement or regulation;
- and
- an order granting the return of the filing fee.

The Tenant, the Landlord, the Landlord's Counsel P.O., and the Landlord's Agents J.S. and V.T. attended the hearing at the appointed date and time.

### **Preliminary Matters**

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the Two Month Notice. The Tenant's request for a monetary order for money owed or compensation for damage or loss, an order to restrict or suspend the

Landlord's right to enter, an order authorizing the Tenant to change the locks of the rental unit, and for an order that the Landlord comply with the *Act* are dismissed with leave to reapply.

During the hearing, the parties discussed that there had been a previous hearing held on April 25, 2022 in which the Tenant had applied to cancel a Two Month Notice to End Tenancy for Landlord's Use dated January 15, 2022. A copy of the April 26, 2022 was submitted into evidence which indicated that the parties attended the previous hearing and had an opportunity to testify and provide evidence for the previous Arbitrator's consideration. In the April 26, 2022 Decision, the Arbitrator found that the Landlord served the Two Month Notice in bad faith. The Arbitrator therefore cancelled the Two Month Notice dated January 15, 2022 and ordered that the tenancy continue.

The Tenant stated that the Landlord served him with a new Two Month Notice dated April 27, 2022 for the exact same reason, after the Landlord learned that he was unsuccessful with ending the tenancy with the first Two Month Notice. As such, the Tenant stated that the Two Month Notice dated April 27, 2022 should also be set aside as the matter cannot be re-heard.

The Landlord confirmed that the Two Month Notice dated April 27, 2022 relates to the Landlord's intent to end the tenancy as he wishes to occupy the rental unit for his own use. The Landlord confirmed that this was the same reason as the previous notice which had been cancelled. The Landlord stated that he now has new evidence which includes written statements from friends and family expressing that the Landlord intended to occupy the rental unit, as well as quotes from moving companies demonstrate the cost of moving expenses.

I find that the Decision, dated April 26, 2022 dealt with a Two Month Notice, relating to the exact same parties, and dispute address as today's hearing for the Tenant's Application to dispute another Two Month Notice. I find that the reasons to end tenancy listed by the Landlord on the Two Month Notice dated April 27, 2022 are identical to the reasons noted in the previous Two Month Notice dated January 15, 2022 which has already been decided on. I find that the new evidence referred to by the Landlord is not new and could have been obtained by the Landlord prior to the previous hearing.

As the merits of the previous Two Month Notice are identical to the current Two Month Notice dated April 27, 2022 and that this has already been determined in the April 26, 2022 decision, I find that today's matter is *res judicata*. In other words, the legal issue

was resolved in a previous decision and I have no authority to alter that decision. I therefore deny reconsideration of this matter during this hearing.

In light of the above, I find that the Tenant was successful with their Application and I therefore cancel the Two Month Notice dated April 27, 2022. The tenancy will continue until legally ended in accordance with the Act. As the Tenant was successful with their Application, I find that the Tenant is entitled to recover the filing fee from the Landlord and I order the Tenant to deduct \$100.00 from one (1) future rent payment.

The Landlord is at liberty to apply for Judicial Review should he feel that the previous decision was unreasonable or unfair.

### Conclusion

I apply *res judicata* to preserve the effect of the first Decision, dated April 26, 2022. As such, the Tenant's Application is successful. The Two Month Notice dated April 27, 2022 is cancelled. The Tenant is entitled to deduct \$100.00 from one (1) future rent payment. The tenancy will continue until legally ended in accordance with the *Act*.

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: September 20, 2022

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Residential Tenancy Branch