



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenant under the *Residential Tenancy Act* (the Act), on May 3, 2022, seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 AM on September 13, 2022, and was attended by the Tenant, the Tenant's lawyer, and the Landlord. All testimony provided was affirmed. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding (NODRP), including a copy of the Application and the Notice of Hearing, sent by registered mail on May 18, 2022, and raised no concerns with regards to service date or method. As a result, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of

Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

### Preliminary Matters

#### Preliminary Matter #2

At the outset of the hearing the Tenant and their lawyer requested that another application filed by the Tenant on August 17, 2022, be crossed with this application, and heard at the same time. Residential Tenancy Branch (Branch) records indicate that on August 29, 2022, the Tenant attended the Branch in person and requested that the applications be crossed. The Tenant was informed at that time that there was insufficient time to cross the applications and was advised that they could make a request at today's hearing which would be considered at the arbitrator's discretion.

Rule 2.1 of the Rules of Procedure states that a party submitting a cross-application must apply as soon as possible and so that the respondent to the cross-application receives the documents not less than 14 days before the hearing. Although the Tenant filed their application on August 17, 2022, the application was not processed and the NODRP not generated until September 1, 2022, leaving insufficient time to cross the applications under rule 2.1. Although the Tenant could have filed an amendment to the Application rather than filing a separate application, the Tenant did not complete and file the required Amendment to an Application for Dispute Resolution form with the Branch. As a result, I find that the Tenant did not file a cross-application or an amendment within the required time.

Further to the above, both rule 2.3 and rule 4.1 of the Rules of Procedure state that unrelated claims contained in an application may be dismissed with or without leave to reapply. As the Tenant sought cancellation of a Two Month Notice in both applications, I find that the priority claim relates to the validity of the Two Month Notice and whether the tenancy will end or continue. Although the Tenant and their lawyer argued that the Tenants subsequent \$25,000.00 monetary claim is predicated on the Tenant's argument that the Two Month Notice has been fraudulently issued, and therefore the \$25,000 monetary claim should be considered related to the matter of the validity of the Two Month Notice and heard at the same time, I disagree. While I appreciate the

position of the Tenant and their lawyer, the matter of whether the Two Month Notice, which is the subject of this dispute, is valid, requires evidence, testimony, and findings of fact in relation to entirely different sections of the Act, than findings in relation to whether or not the Tenant has satisfied me that they are entitled to monetary compensation in the amount of \$25,000.00. Further to this, the burden of proof in relation to the Two Month Notice is on the Landlord, whereas the burden of proof in the Tenant's monetary claim for compensation is on the Tenant. Finally, the time constraints for the hearing would not allow me to deal with the pressing matter of possession of the rental unit in a timely manner if the applications were to be crossed and heard together and the Landlord denied receipt of the application filed by the Tenant on August 17, 2022.

As a result of the above, I declined the Tenant's request to cross their applications. As a further note, even if the Tenant had filed their second application with sufficient time for it to be crossed under the Rules of Procedure, I nonetheless would have severed all other issues, including the monetary claim for \$25,000.00, under rule 2.3 of the Rules of Procedure, so that the pressing matter of possession of the rental unit could be resolved. The hearing proceeded based only on the Application originally set to be heard before me today regarding validity of the Two Month Notice and recovery of the filing fee.

### Preliminary Matter #2

Although the Tenant sought to dispute a Two Month Notice, a copy of the Two Month Notice was not submitted for my review and consideration by either the Tenant or the Landlord. When I asked the Landlord why they had not submitted a copy of the Two Month Notice or any documentary evidence in support of their position that they have grounds to end the tenancy under section 49 of the Act, the Landlord stated that they did not understand that this was needed. The Landlord stated that they had sent the Two Month Notice and documentary evidence in support of the Two Month Notice to the Director along with a complaint letter and argued that I should therefore consider the documentary evidence and the Two Month Notice to have properly been submitted to the Branch for my consideration in relation to this hearing. I disagree.

The dispute resolution process and the complaint process are entirely different processes at the Branch. Documents submitted to the Branch for a complaint are not as a matter of course placed as evidence on a dispute resolution file, as not all complaints relate to an Application for Dispute Resolution. Further to this, rule 3 of the Rules of

Procedure lays out the requirements for serving documents for consideration at a dispute resolution hearing on the other party, and submitting these documents to the Branch for consideration. Although several submission options are available to parties, such as submitting them through the online dispute access site, dropping them off or sending them into the Branch or dropping them off or sending them into a service BC location, I note that submission through the complaints process is not one of them.

As a result of the above I find that the Landlord has not submitted for my consideration at the dispute resolution hearing either a copy of the Two Month Notice or any other documentary evidence.

The Landlord then requested an opportunity to submit a copy of the Two Month Notice and their documentary evidence to the Branch for my consideration, either during or after the hearing. For the following reasons, I denied that request. Firstly, the evidence submission timelines set out under the Rules of Procedure for respondent's evidence have passed. Rule 3.15 of the Rules of Procedure requires that evidence the respondent intends to rely on at the hearing be received by the Branch not less than seven days before the hearing. Secondly, although rule 3.17 of the Rules of Procedure allows for the consideration of new and relevant evidence, acceptance and consideration of new and relevant evidence is contingent upon the party who is making the request being able to satisfy the arbitrator that the evidence was not available at the time either the application was made or when the evidence was required to be submitted. Based on the testimony of the Landlord, I am satisfied that the evidence the Landlord wishes to submit does not meet the requirements for new and relevant evidence as it was clearly in existence in advance of the hearing. Further to this, I find that the Landlord's failure to submit documentary evidence for my review and consideration, including but not limited to a copy of the Two Month Notice, was a result of their failure to act diligently in reviewing both their obligations under the Act and the procedures related to this dispute resolution hearing.

#### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Two Month Notice?

If not, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The parties agreed that a Two Month Notice had been served on the Tenant for Landlords use of property with an effective date of June 30, 2022, and that the Tenant remains in the rental unit. Although neither party submitted a copy of the Two Month Notice for my review and consideration, the Tenant's lawyer stated that the Two Month Notice indicates that it was issued because the rental unit will be occupied by the child of the Landlord or the Landlord spouse.

No documentary evidence was submitted by the Landlord for my consideration.

### Analysis

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, and that in situations where a tenant has applied to dispute a notice to end tenancy, the landlord must prove the reason they wish to end the tenancy. As a result, I find that the burden of proof in relation to validity and enforceability of the Two Month notice falls to the Landlord in this case.

Although section 49 of the Act allows a landlord to end tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit, subsection 7 states that a notice under this section must comply with section 52. Section 52 of the Act states that in order to be effective, a notice to end tenancy must be in writing and must be signed and dated by the person giving the notice, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and when given by a landlord, be in the approved form. As a copy of the Two Month Notice was not submitted for my review and consideration by the Landlord, who bears the burden of proof in relation to validity of the notice, and a copy is not otherwise before me for review and consideration, I find that the Landlord has therefore failed to satisfy me on a balance of probabilities that the Two Month Notice complies with section 52 of the Act. As a result, I grant the Tenant's claim seeking cancellation of the Two Month Notice with an effective date of June 30, 2022, and I order that it is of no force or effect.

As a result of the above, I find it unnecessary to make any further findings of fact or law in relation to the Two Month Notice, including but not limited to any findings of fact in relation to validity of the grounds for ending the tenancy noted by the Landlord on the Two Month Notice. As a result, the parties are advised that the Landlord is therefore not prohibited from issuing a new notice to end tenancy on the same basis in the future,

should they wish to do so, and such a notice to end tenancy would not be considered a matter of *res judicata* as a result of this hearing and decision.

As the Tenant was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. As per their request and pursuant to section 72(2)(a) of the Act, the Tenant is therefore entitled to deduct \$100.00 from the next months rent due under the tenancy agreement in recovery of the filing fee.

### Conclusion

I grant the Tenant's Applications seeking cancellation of the Two Month Notice with an effective date of June 30, 2022, and I therefore order that the tenancy continue in full force and effect until it is ended under the Act.

The Tenant is entitled to deduct \$100.00 from the next months rent due under the tenancy agreement in recovery of the 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: September 14, 2022

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Residential Tenancy Branch