



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

On May 27, 2022, the Tenant applied for a Dispute Resolution proceeding seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

S.A. attended the hearing as an advocate for the Tenant; however, there was no written authorization from the Tenant allowing him to do so. The Tenant attended later and provided his approval for S.A. to represent him. The Landlord did not make an appearance at any point during the 32-minute teleconference. At the outset of the hearing, I informed S.A. that recording of the hearing was prohibited and he was reminded to refrain from doing so. As well, he provided a solemn affirmation.

He advised that the Tenant served the Landlord with the Notice of Hearing and evidence package by registered mail on June 9, 2022, to the Landlord’s service address on the tenancy agreement. He then read from an email, dated June 14, 2022, from the Landlord’s agent who indicated that this package was received. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Tenant’s Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

He also advised that the main reason for this Application was for the Landlord’s to comply with the *Act* with respect to the reason for service of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) pursuant to Section 49 of the *Act*, and that the Tenant’s intention was also to dispute the Notice. He was directed to provide information on this Notice as it was not uploaded prior to the hearing.

Given that it was clear that the Notice was served to the Tenant on May 26, 2022, and that the Tenant made this Application on May 27, 2022, I can reasonably infer that this Application was made in part to dispute the Notice. Furthermore, given that S.A. indicated that the Landlord did not apply for an Order of Possession on this Notice, I can also reasonably infer that the Landlord was aware that this hearing was to address the Notice as well. As such, I am satisfied that the issue of the Notice and the Tenant's request for an Order to comply will both be addressed in this Decision. The Tenant's Application has been amended to reflect this.

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 an Order for the Landlord to comply?
- 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.

S.A. advised that the tenancy started on April 1, 2021, that rent was established at \$2,700.00 per month, and that it was due on the first day of each month. A security

deposit of \$1,350.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

He testified that the Landlord's agent served the Notice by email and by posting it on the Tenant's door on May 26, 2022. The reason the Notice was served 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)." As well, it was indicated on the Notice that "The landlord or the landlord's spouse" would be the person(s) specifically occupying the rental unit. The effective end date of the tenancy was noted on the Notice as July 31, 2022.

The Tenant did not submit a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be provided by S.A. as it is essential to the matter at hand. He provided a copy of this Notice by uploading it to the Residential Tenancy Branch system during the hearing.

S.A. referenced the documentary evidence submitted and pointed to emails from the Landlord's agent, starting on April 20, 2022, where the agent indicated that the Landlord would be seeking a rent increase to offset the amount of rent that the Landlord was paying on an accommodation that she was renting. In this email, the agent issued an ultimatum where the rent would be increased to \$3,500.00 per month, otherwise the Landlord would serve the Notice to end the tenancy. The Tenant responded to the agent informing her that this demand was illegal, that this was "an attempt to circumvent the law", and that he would be dispute the Notice should one be given. On May 27, 2022, the agent sent the Tenant an email stating that the Landlord would move back into the rental unit "because their rent for the other place where they lived now is much higher..."

### 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 the 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.

However, I find it important to note that the burden of proof lies on the party issuing the Notice to substantiate that the rental unit will be used for the stated purpose on the Notice. As the Landlord has not appeared at the hearing, I am not satisfied that the Landlord has properly substantiated the grounds for ending the tenancy. As such, I am not satisfied of the validity of the Notice and the Notice of May 26, 2022, is cancelled and of no force and effect.

Furthermore, Part 3 of the *Act* outlines the requirements for increasing the rent during a tenancy. When reviewing the Landlord's agent's emails, it is entirely evident that the Landlord and/or agent is attempting to circumvent the *Act* by threatening the Tenant with an illegal rent increase, and that if the Tenant does not agree, then the Landlord will end the tenancy with the Notice.

I note that Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit. Given that the agent specifically indicated that the Tenant must agree to the illegal rent increase or else the Notice would be served, this ultimatum is clearly an attempt to contract outside of the *Act*. In addition, this reasoning would not meet the requirement of good faith.

When reviewing the totality of the evidence before me, I **Order** that the Landlord and/or agent comply with the *Act* with respect to increasing the rent. Moreover, the Landlord and/or agent are cautioned that if any such further, blatant attempts to contravene the *Act* are committed, the Tenant is at liberty to apply for a Monetary Order for compensation. Clearly, it should also be noted that any similar Notice served from this point forward would be questionable, with respect to good faith, based on the Landlord's and/or agent's past dubious actions. The Landlord and/or agent are cautioned from continuing the inexcusable manner with which they are managing this rental unit.

Furthermore, the Landlord and/or agent are now formally warned that the Compliance

and Enforcement Unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the *Act*. This unit has the sole authority to determine whether to proceed with a further investigation into repeated matters of contraventions of the *Act*, and has the sole authority to determine whether administrative penalties are warranted in certain circumstances. The Tenant is reminded that he can contact the Residential Tenancy Branch to inquire about initiating an investigation by the Compliance and Enforcement Unit should he believe that the Landlord and/or agent is continuing to attempt to circumvent the *Act*.

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 in satisfaction of this claim.

### Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of May 26, 2022 to be cancelled and of no force or effect.

Furthermore, the Landlord is **Ordered** to comply with the *Act*. Any further attempts to illegally increase the rent, to serve invalid notices to end tenancy, or to contravene the *Act* will be at the Landlord's detriment.

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: October 6, 2022

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Residential Tenancy Branch