



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On June 15, 2022 the tenant applied for:

- an order to cancel a Two Month Notice for Landlord's Use, dated May 29, 2022 (the Two Month Notice); and
- the filing fee.

On October 24, 2022 the tenant applied to amend her application to:

- dispute a second Two Month Notice, dated July 4, 2022; and
- to seek an order for the landlord to comply with the Act, regulation, and/or tenancy agreement.

The hearing was attended by the tenant and the landlord. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The parties confirmed receipt of each other's respective hearing materials.

### Preliminary Matter

Considering the tenant's request to amend her application to dispute the second Two Month Notice, dated July 4, 2022, I note that the effective date on the notice is September 30, 2022. As section 66(3) of the Act states that an arbitrator must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice, and the hearing took place after

September 30, 2022, the effective date of the July Two Month Notice, I cannot grant the tenant's request to amend her application to dispute the second Two Month Notice.

Considering the tenant's request to amend her application to seek an order for the landlord to comply with the Act, regulation, and/or tenancy agreement, as the amendment form and the tenant's testimony on this amendment request referenced only issues that would be considered in her dispute the Two Month Notice dated May 29, 2022, I decline to accept the tenant's amendment.

### Issues to be Decided

- 1) Is the tenant entitled to an order cancelling the Two Month Notice?
- 2) If not, is the landlord entitled to an order of possession?
- 3) Is the tenant entitled to the filing fee?

### Background and Evidence

Those present agreed on the following particulars of the tenancy. It began November 1, 2017; rent is \$2,200.00, including utilities; rent is due on the first of the month; and the tenant paid a security deposit of \$1,000.00, and a pet damage deposit of \$800.00, which the landlord still holds.

The landlord testified he served the Two Month Notice on the tenant by email on May 30, 2022, and telephoned the tenant about it. The landlord testified that in a phone call on May 31, 2022, the tenant confirmed she had received the notice. The tenant testified she received the landlord's email on May 31, 2022, and knew it was a notice to end tenancy. The tenant submitted that the notice was not served properly as she had not given the landlord permission to serve documents by email.

The Two Month Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form.

The Two Month Notice indicates the tenancy is ending because the father or mother of the landlord or landlord's spouse will occupy the unit.

The landlord testified that he intends for his parents-in-law to move into the rental unit. He testified that they currently live with live with him and the rest of his family, and that he and his spouse just had a second baby. The landlord testified that his father-in-law

has a health issue which may require a live-in caregiver. The landlord testified that for these reasons he needs to find a place for his in-laws to live.

The landlord submitted as evidence a screenshot of a text conversation with the tenant. On May 6, 2022, the landlord states his parents may move in, and on May 31, 2022 the landlord writes that his parents won't wait too long; from the context of the conversation, this refers to when the tenant will vacate the unit.

The landlord's in-laws did not attend the hearing, were not summoned as witnesses, and did not make a written submission regarding their intention to move into the rental unit.

The tenant submitted that the landlord is not acting in good faith. The tenant testified that most of the tenancy had been harmonious, and that the landlord served her with the Two Month Notice after they had a dispute regarding utilities.

The tenant testified that over the previous 5 years of the tenancy, the landlord had said that the 6-bedroom property was too large for his in-laws, and that they were too old to maintain it.

The tenant testified that the landlord's initial agreement to accept more rent from her in exchange for the tenancy continuing was further evidence that the notice was not served in good faith and that the landlord does not require the property for his parents-in-law.

The landlord testified that he had not sought the increase, the tenant had offered it, and that he would prefer that the tenant move out.

The landlord testified that he had spoken with his in-laws, and they had planned to move into the unit for September 2022, but could not as the tenant had been unable to find a place.

### Analysis

Based on the testimony of the parties, I find the Two Month Notice sufficiently served on the tenant on May 30, 2022, in accordance with section 71 of the Act, and find it received by the tenant on May 31, 2022.

As the Two Month Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reasons for ending the tenancy, and is in the approved form, I find it meets the form and content requirements of section 52.

The standard of proof in a dispute resolution is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. And, as noted in Residential Tenancy Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member*, when the issue of a dishonest motive or purpose for ending the tenancy is raised by a tenant, the onus is on the landlord to establish they are acting in good faith.

Policy Guideline 2A explains that good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the Act or the tenancy agreement.

In her testimony, the tenant has indicated that the landlord has not served the Two Month Notice in good faith.

The landlord has testified that he intends for his parents-in-law to move into the rental unit to give his growing family more room. The landlord has submitted texts in which he tells the tenant that his parents may move in, and later that his parents won't wait long for the tenant to move out. The landlord testified that his in-laws had planned to move into the rental in September 2022, but could not as the tenant had not found a new place.

The landlord has provided limited evidence in support of his claim. I also note that the landlord's in-laws did not attend the hearing to provide testimony, or provide a written submission stating they intend to occupy the unit.

The tenant testified that all was well with the tenancy until the parties had a utility dispute, and it was after that the landlord served her with the Two Month Notice. The

tenant testified that throughout the tenancy the landlord had maintained that the rental was not suitable for his parents-in-law.

The parties have each provided plausible accounts. As in this case the onus is on the landlord to prove the reason for the Two Month Notice, and that he is acting in good faith, in order to be successful, the landlord needed to provide sufficient evidence over and above his testimony to establish his claim.

Taking into careful consideration all the oral and documentary evidence presented, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the reason for the Two Month Notice, nor that he is acting in good faith.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in her application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

### Conclusion

The tenant's application is granted.

The Two Month Notice is cancelled; the tenancy will continue until it is 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: November 09, 2022

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Residential Tenancy Branch