



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing dealt with a tenant's application for cancellation of a Two Month Notice to End tenancy for Landlord's Use of Property ("2 Month Notice").

Both the landlord and the tenant appeared for the hearing and were affirmed. The landlord was also assisted by a law student. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the tenant served the landlord with the proceeding package, via registered mail, and the landlord received it.

I noted that I had not received any evidence from the landlord and the landlord confirmed they intended to provide their position orally during the hearing.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process.

### Issue(s) to be Decided

Should the 2 Month Notice be upheld or cancelled?

### Background and Evidence

On August 1, 2022 the landlord completed the first two pages of a four-page 2 Month Notice and left the two pages on the tenant's kitchen counter after entering the rental unit through an interior door that divides the landlord's living unit from the rental unit.

The tenant filed to dispute the 2 Month Notice, indicating, in part, that he only received two pages of the 2 Month Notice; it was not properly served when the landlord left it on his kitchen counter after illegally entering the rental unit; and, the tenant questioned the landlord's good faith intention to end the tenancy.

The landlord indicated she did not realize the 2 Month Notice has four pages and that she had been given only two pages by a clerk at a Service BC access centre. The landlord stated the clerk at the BC Service access centre suggested the landlord not attach the 2 Month Notice to the tenant's door and the landlord indicated that the parties had a more casual tenancy relationship in describing the reason she entered the rental unit and left the two pages of the 2 Month Notice on the tenant's kitchen counter.

The law student assisting the landlord attempted to put forth the landlord's reasons for seeking to end the tenancy for landlord's use, which I declined to hear, having found the landlord failed to serve the tenant with an effective notice to end tenancy.

After informing the parties of my decision to cancel the 2 Month Notice orally, the landlord's law student started to argue there is cause for ending the tenancy and the landlord needs to regain possession of the rental unit to make repairs that involve asbestos. As such, cancelling the 2 Month Notice will unduly prejudice the landlord.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Section 88 of the Act provides for all of the ways a document may be served to the other party. Section 88 of the Act does not permit the landlord to enter the rental unit and leave a document on the kitchen counter.

While the landlord may be of the view the parties had a more casual relationship, the tenant has taken issue with the landlord entering the rental unit when she left the 2 Month Notice in the rental unit and referred to it as illegal entry in his Application for Dispute Resolution. Accordingly, as I stated during the hearing, I suggest the landlord familiarize herself with all of the proper methods of service and ensure she serves the tenant in one of the permissible ways in the future.

While the tenant was not properly served, he did receive the two pages of the 2 Month Notice and filed to dispute the 2 Month Notice. As such, I deem the tenant sufficiently

served with these two pages pursuant to the discretion afforded me under section 71 of the Act. As I cautioned the landlord during the hearing, another Arbitrator may not deem the tenant sufficient served in the future and another Arbitrator is not bound by my decision to find the tenant sufficiently served when the landlord does not serve in one of the property methods. Therefore, the landlord ought to serve the tenant using one of the permissible methods of service in the future.

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid and effective notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

Section 52 of the Act provides the requirements for a notice to end tenancy, in general. Section 52 of the Act requires:

**Form and content of notice to end tenancy**

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
  - (e) when given by a landlord, be in the approved form.

[My emphasis underlined]

In this case, the landlord only provided the tenant with two of the four pages that form a 2 Month Notice that is in the approved form. As such, I find the landlord did not give the tenant a notice to end tenancy in the approved form and the two pages the landlord did give are not effective to end the tenancy. Therefore, I find the landlord did not meet her burden to prove she gave the tenant a valid and effective notice to end tenancy and I grant the tenant's request that I cancel the 2 Month Notice he received on August 1, 2022.

Having found the 2 Month Notice ineffective given the above described deficiency, I found it unnecessary to further explore the reason(s) the landlord issued the 2 Month Notice as I may not issue an Order of possession to the landlord unless I am satisfied that a notice to end tenancy that meets the form and content requirements of section 52 of the Act.

Giving a landlord an Order of Possession under a tenant's Application for Dispute Resolution is found under section 55(1) of the Act. As seen in section 55(1)(b), the notice to end tenancy must comply with section 52 of the Act and the partial notice to end tenancy given to the tenant in this case does not. Below, I have reproduced section 55(1) for the parties' further reference:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[My emphasis underlined]

Having cancelled the 2 Month Notice dated August 1, 2022, the tenancy continues at this time.

As to the argument that cancellation of the 2 Month Notice is unduly prejudicial to the landlord, I reject that position as the cancellation of the 2 Month Notice was solely the result of the landlord's failure to serve the tenant with a notice to end tenancy that has all of the pages of the approved form.

The landlord is at liberty to issue another 2 Month Notice to the tenant if appropriate in the circumstances. Any future notice to end tenancy issued to the tenant by the landlord is also subject to being disputed by the tenant.

As an aside, I note that the landlord had dated the 2 Month Notice on August 1, 2022, with a stated effective date of September 30, 2022, which is insufficient notice. Issuing a 2 Month Notice requires that the landlord give the tenant two full months of notice,

meaning the month in which the notice is given does not count as a month of full notice. Where a notice to end tenancy has an incorrect effective date stated, the effective date shall change automatically to comply with the notice requirement, as provided under section 53 of the Act.

### Conclusion

The partial 2 Month Notice given to the tenant is ineffective to end the tenancy and I grant the tenant's request for cancellation of the 2 Month Notice. The tenancy continues at this time; however, the landlord is at liberty to issue another 2 Month Notice if appropriate in the circumstances.

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: December 23, 2022

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Residential Tenancy Branch