



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction, Preliminary and Procedural Matters-

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) issued by the landlord.

The tenant and spouse and the landlord and spouse attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The tenant said that they served the landlord with the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by placing the documents in the landlord's mailbox. The landlord confirmed receiving the tenant's dispute package.

The landlord confirmed that they did not file documentary or other evidence for the hearing. Later in the hearing, the landlord said they were of the understanding they would just tell me why they wanted to use the rental unit at the hearing.

The landlord further appeared to have an issue with evidence, repeatedly asking if evidence was required and asked what was evidence. The landlord was told each time that evidence prior to the hearing is not required, but is optional for participants to support their position in the dispute, if they choose.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled?

Background and Evidence

The tenant said he moved into the rental unit on February 17, 2022, and the landlord said that the tenancy according to the written tenancy agreement was February 15, 2022, for a monthly rent of \$2,400.

No written tenancy agreement was filed in evidence by either party.

The evidence filed by the tenant was page 1 and page 2 of the 4-page 2 Month Notice.

In response to my inquiry, the tenant said he was served the landlord's 2 Month Notice by registered mail and the only documents in the envelope were these 2 pages. The tenant denied receiving the 3<sup>rd</sup> and 4<sup>th</sup> pages of the 2 Month Notice.

The landlord said they served 4 pages. In their testimony, the landlord said that they received the tenant's application, which had the 2 Month Notice in evidence, which was proof that the landlord served the 2 Month Notice, according to the landlord. The landlord read from the Notice, that the Notice was served by registered mail.

I note that the 2<sup>nd</sup> page of the 2 Month Notice did have that the Notice was served by registered mail; however, that notation was on the 2<sup>nd</sup> page.

In response to my inquiry, the landlord confirmed that they were responsible for mailing the 2 Month Notice to the tenant and there was no other proof of the documents placed in the envelope.

Additionally, the landlord, although not requested, testified about why the 2 Month Notice was issued. The landlord said that they should be able to use their own property for their son to use. Their son was getting married and wanted to live there, after making renovations to the rental unit. The planned renovations included upgrading the bathroom.

## Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, they served the tenant a valid Notice and to prove the reasons listed on the Notice.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 49 of the Act provides that a landlord may end a tenancy for landlord's use, under certain circumstances listed. Section 49(7) requires that the 2 Month Notice must comply with section 52 *[form and content of notice to end tenant]*.

### **Section 52 requires the following:**

#### **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 added]

In the matter before me, I find the landlord's Notice was not in the approved form. In this case, the approved form is a 4-page Notice. I find the landlord submitted insufficient evidence that they served the tenant with all 4 pages of the Notice. The tenant submitted that they only received pages 1 and 2, which they filed in evidence. The landlord, I find, submitted unclear evidence that the tenant received the full, 4-page form. The landlord failed to submit their own documentary evidence and the only evidence before me was the tenant's copy of the 2- page, 2 Month Notice

Tenancy Policy Guideline 18 states that an arbitrator may not amend a form which does not contain the required information.

The Act requires that notices to end tenancy issued by the landlord be in the approved form due to the fact that the approved forms contain all of the required information, including compensation, for a tenant.

As there was insufficient evidence that the landlord served the full form as legally required, I find they did not meet the statutory requirements under section 52 the Act as to form and content and I therefore find it invalid. As I have found the form invalid, I do not have to consider the reason listed by the landlord for ending the tenancy.

As a result, I **order** the landlord's Two Notice to End Tenancy for Landlord's Use of Property, dated September 3, 2022, be **cancelled** and therefore has no force and effect. I **order** that the tenancy will continue until ended in accordance with the Act.

### Conclusion

The tenant's application is successful. The 2 Month Notice issued by the landlord is cancelled and is of no force or effect.

The tenancy shall continue until 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 31, 2023