



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      TT: CNL-MT, MNDCT, AAT, OLC, FFT  
                             LL: OPL, MNDCL, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on September 3, 2022 and (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order to cancel a Two Month Notice to End Tenancy for Landlord’s Use of the Property dated August 30, 2022 (the “Two Month Notice”);
- an order granting more time to cancel a Notice to End Tenancy;
- a monetary order for damage or compensation;
- an order that the Landlord comply with the Act;
- an order allowing access to the Tenant or their guest; and
- an order granting the return of the filing fee.

The Landlords’ Application for Dispute Resolution was made on November 2, 2022 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession based on the Two Month Notice;
- a monetary order for damage, compensation, or loss; and
- an order granting recovery of the filing fee.

The Tenant A.C., the Tenant’s advocate K.C., the Landlords, the Landlord’s Counsel C.P., and the Landlord witness K.C attended the hearing at the appointed date and time. At the start of the hearing, the Tenant stated that she served the Notice of Hearing

to the Landlords by email on September 24, 2022. The Tenant stated that she served the Landlord with her documentary evidence by leaving it on the back deck. The Landlords stated that they only received partial pages of the Notice of Hearing by the Tenant via email. The Landlords denied having received the Tenant's documentary evidence.

### Preliminary Matters

Section 89 of the Act establishes the following Special rules for certain documents, which include an application for dispute resolution: An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

I find the Tenant did not serve the Landlord with the Notice of Hearing in accordance with Section 89 of the Act. I am satisfied that the Landlord was made aware of the hearing as they confirmed having received the first page of the Tenant's Application. Furthermore, the Landlords had submitted their own Application which was crossed with the Tenant's Application.

With respect to the service of the Tenant's evidence, Section 88 of the Act stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*

- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

According to the Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing.

I find that the Tenant did not serve their evidence to the Landlord in a manner outlined in Section 88 of the Act. As the Landlords did not received the Tenant's evidence, I find that I will not consider the Tenant's evidence in this decision. Only the Tenant's oral submissions will be considered.

The Tenant confirmed having received the Landlords' Notice of Hearing and documentary evidence. As there were no issues raised, I find that the Landlords' documents were sufficiently served pursuant to Section 71 of the Act.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the Two Month Notice.

The Tenant's request for a monetary order, an order that the Landlord allow access, and an order that the Landlord comply with the Act are dismissed with leave to reapply.

Similarly, the Landlords' request for a monetary order is also dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice, pursuant to Section 49 of the Act?
2. Is the Tenant entitled to more time to cancel a Notice to End Tenancy, pursuant to Section 66 of the Act?
3. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the Act?
4. If the Tenant is not successful in cancelling the Two Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55 of the Act?
5. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began in May of 2012. Currently, the Tenants are required to pay rent in the amount of \$1,200.00 to the Landlords on the first day of each month. The Tenants are also required to pay a portion of several services provided to the Tenants by the Landlords. The Tenants were not required to pay a security deposit to the Landlords. The parties confirmed that the Tenants continue to occupy the rental unit.

The Landlord's Counsel submits that the Two Month Notice was served to the Tenants in person on October 30, 2022. The Tenant A.C. confirmed receipt. The Landlords' reason for ending the tenancy on the Two Month Notice is;

*"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)."*

The parties testified and agreed that the Tenants are the Landlord's son K.C. and his ex spouse A.C. The couple have occupied the rental unit since May 2012, paying rent to the Landlords each month. The Tenants had a dissolution of their marriage in August 2022. Since then, K.C. has primarily occupied the bedroom of the rental unit, while Tenant A.C. has primarily occupied the remaining portion of the rental unit. The Landlords' Counsel submits that the Landlords wish to end the current tenancy with the Tenants in order to have their son K.C. occupy the rental unit on his own. K.C. was made available by the Landlords and testified in support of his intention to occupy the rental unit on his own, once the tenancy comes to an end.

In response, the Tenant's Advocate submits that the Landlord is not serving the Two Month Notice in good faith, as it is in response to the separation between the two Tenants. The Tenant's Advocate states that the Landlord cannot end a tenancy for their son to occupy the rental unit as he is already occupying the rental unit.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may 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. The Landlords intend to end the current tenancy for their son to occupy the rental unit on his own.

The Landlords served the Tenant in person with the Two Month Notice on August 30, 2022. The Tenant confirmed having received the notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenant received the Two Month Notice on August 30, 2022 and filed the Application on September 3, 2022. Therefore, the Tenant is within the 15 day time limit under the Act and their claim to extend the time limit was not necessary.

In this case, I find that there was a tenancy established between the Tenants and the Landlord in May of 2012. I accept that the Tenants separated in August 2022. I find that while the Landlords' son is a current Tenant of the rental unit, I find that there is nothing noted in the Act which prevents the Landlord from ending the current tenancy with the co-tenants in order for the Landlord's son to commence a new tenancy as the sole occupant.

I find that the Landlords have provided sufficient evidence to demonstrate that the Landlords' son K.C. intends to occupy the rental unit on his own at the end of the tenancy.

While the Tenant's Advocate raised the issue relating to bad faith, I find that there is insufficient before me to indicate that the Landlords are trying to avoid their obligations under the Act, or have an ulterior motive instead of accomplishing the stated purpose of the Two Month Notice by having their son become the sole occupant of the rental unit.

As such, I dismiss the Tenant's Application to cancel the Two Month Notice dated without leave to reapply. Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlords an order of possession.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective on January 31, 2023 at 1:00PM, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

While the Landlords were successful with their Application, I find that their Application was not necessary, given the Landlords would have been entitled to an order of possession should the Tenant's Application to cancel the Two Month Notice was dismissed. As such, I decline to award the Landlords with the return of their filing fee.

### Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice is dismissed without leave to reapply. The Landlords are granted an order of possession effective on January 31, 2023 at 1:00PM. The order should be served onto the Tenant as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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: January 24, 2023

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Residential Tenancy Branch