



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution on November 8, 2022 to dispute a notice to end tenancy issued by the Landlord in October 2022. Additionally, they seek the Landlord's compliance with the tenancy agreement/law, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on March 20, 2023. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The Tenant attended the hearing. An agent or the Landlord attended. I provided the parties with an explanation of the hearing process and affirmed an oath from them.

### Preliminary Matter – Notice of Dispute Resolution Proceeding and Tenant evidence

At the outset, the Tenant set out that they notified the Landlord about this hearing via the Notice of Dispute Resolution Proceeding they sent to the Landlord via registered mail in November. As they stated in the hearing, this was within the guidelines for delivery from the Application process, and included evidence they prepared initially for this hearing. The Landlord did not dispute that they received the Notice of Dispute Resolution Proceeding from the Tenant in a timely manner.

The Landlord's agent did not receive the evidence sent more recently by the Tenant. This was due to the Landlord being out of the country not present at their address for service, from approximately mid-February. The Landlord had not yet returned as of the date of this hearing.

Based on what the Tenant presented in the hearing, I find they served the Notice of Dispute Resolution Proceeding to the Landlord in a timely manner as required. The Tenant provided

initial evidence to the Landlord in November, and I find it more likely than not that the Landlord received this evidence. The Tenant served these initial pieces as required.

The Tenant in the hearing described sending one additional piece of evidence to the Landlord in March 2023. They provided an image of the envelopes they used for this purpose, clearly addressed, with a copy of the additional evidence. This was on March 8 via registered mail. The Landlord's agent in the hearing described not being able to obtain this registered mail from the post office on the Landlord's behalf; however, I am satisfied the Tenant completed service as required and within the timeline established in the *Residential Tenancy Branch Rules of Procedure*.

#### Preliminary Matter – Landlord's request for adjournment

An agent for the Landlord attended the hearing; the Landlord did not attend. The Landlord's agent asked for an adjournment in this matter and proposed a date toward the end of March 2023. This was due to the Landlord having to leave the country in mid-February for a family matter. The Landlord's agent stated they had not heard from the Landlord since that time. The Landlord's agent also set out that the Landlord consulted with them on this matter in the first week of January 2023.

I decline to grant an adjournment in this matter. As above, the Landlord was aware of the hearing since November 2022 when the Tenant served notice of this hearing to the Landlord in a timely manner. The Landlord faced a situation in February; however, that does not account for the ensuing months prior to their need to depart. I find the Landlord's agent disclosed that they had not heard specifically about this matter from the Landlord.

Because the Landlord had the opportunity to prepare for this hearing, and has an agent working with them in this matter, I decline the request for an adjournment. The Tenant would be unduly prejudiced in this matter where the Landlord could have provided information in proper fashion to their agent when they retained that agent in January.

#### Preliminary Matter – key issue

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession,

the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

In the hearing, I notified both parties that the issue of the Landlord’s compliance with the law/tenancy agreement was not related to the key issue of the end-of-tenancy notice.

I dismiss the Tenant’s request for the Landlord’s compliance, with leave to re-apply. This means the Tenant may file a new and separate application to address this issue.

### Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the Two-Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession of the rental unit?

Is the Tenant entitled to reimbursement of the Application filing fee?

### Background and Evidence

The Tenant provided evidence in the record when they provided their Application to the Residential Tenancy Branch. As stated by the Tenant in the hearing, this was how they received the notice-to-end-tenancy documentation from the Landlord in October 2022.

This is:

- page 2, 3, and 4 of a four-page document, form RTB-32, with the second page making the indication that the rental unit would be occupied by the landlord or the landlord’s spouse
- page 1 and 2 of a two-page document, form RTB-34, giving information on the service of a notice-to-end tenancy document on October 30, 2022. There is no indication on the service method on this document, and no signature from the Landlord on page 2.

In the hearing, the Tenant described receiving notification of the tenancy ending, from the Landlord, via text message. According to the Tenant, they suggested the Landlord use the proper form for this matter. The Tenant was then of the understanding that the Landlord was seeking to end the tenancy because of a renovation to the rental unit.

The Landlord's agent in the hearing stated that they were aware of the Landlord's need for the unit for their child who was going to start a business using the rental unit space. The Landlord's agent stated they did not have any other information in this situation.

The Tenant stated, based on what they heard in the hearing, that this was the fifth different scenario they heard about from the Landlord concerning their need to use the rental unit.

### Analysis

The *Act* s. 49 grants legal authority to a landlord to end a tenancy for their own use, or that of a family member, or if conditional on some sale of the rental unit. The Landlord must issue a notice to end the tenancy as per s. 51(2)(a).

In this present matter, it is the Landlord that has the burden of proof to show there is sufficient reason to end the tenancy. The subsection 49(7) specifies that a notice under this section must comply with s. 52, *i.e.*, the form and content of said notice.

The following s. 52 states, in order to be effective, the notice 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) . . . state the grounds for ending the tenancy,  
    . . . and
- (e) when given by a Landlord, **be in the approved form.**

I find the testimony of the parties clear that the Landlord did not issue a notice to end the tenancy in the approved form. The Tenant did not present a complete copy of a Two-Month Notice that is the approved form especially for this purpose. The Landlord did not attend the hearing to present otherwise and did not provide evidence of a complete document that complies with all pieces of s. 52.

I find the document issued by the Landlord to the Tenant on October 30, 2022 does not comply with s. 52; therefore, the core of s. 49 cannot be established.

For this reason, the end of tenancy is cancelled.

As the Tenant was successful in this application, I find the Tenant is entitled to recover the \$100 filing fee they paid for this Application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

### Conclusion

For the reasons above, I order the notice to advise the Tenant of the tenancy ending is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 20, 2023

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Residential Tenancy Branch