



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      Tenant: CNL, MNDCT, RP, OLC, FFT  
Landlord: OPL

### Introduction

This hearing was convened as a result of the parties' applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied under the Act for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 11, 2023 (the "Two Month Notice") pursuant to section 49;
- compensation of \$35,000.00 for monetary loss or money owed by the Landlord pursuant to section 67;
- an order for the Landlord to make repairs to the rental unit pursuant to section 32;
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord applied for an Order of Possession of the rental unit under the Two Month Notice, pursuant to section 55 of the Act.

The Tenant attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Landlord did not attend this hearing. I left the teleconference hearing connection open until 10:18 am in order to enable the Landlord to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code (referenced on the cover page of this decision) had been provided in the notice for this hearing. I used the teleconference system to confirm that the Tenant and I were the only ones who had called into the hearing.

I informed the Tenant that the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) prohibit unauthorized recordings of dispute resolution hearings.

#### Preliminary Matter – Removal of Parties from the Tenant’s Application

The Tenant’s application initially included the Tenant’s daughter as a second tenant and applicant. The Tenant confirmed that her daughter resides in the rental unit, but only the Tenant had signed a tenancy agreement with the Landlord. I find the Tenant’s daughter is not a tenant, but an occupant. As such, I have removed the Tenant’s daughter as a party pursuant to section 64(3)(c) of the Act.

The Tenant’s application also initially named the Landlord’s property manager, Nu Stream Realty, as a landlord and respondent. The Tenant confirmed that she did not sign a tenancy agreement with Nu Stream Realty. I find the Two Month Notice also indicates that Nu Stream Realty was acting as agent for the Landlord. According to the Tenant, she had been informed the Landlord’s contract with Nu Stream Realty would be ended effective March 31, 2023. Based on the foregoing, I have removed Nu Stream Realty as a landlord and respondent pursuant to section 64(3)(c) of the Act.

I note that by removing the parties above, I have unified the styles of cause for both the Landlord and the Tenant’s applications, as the Landlord’s application does not include the Tenant’s daughter and Nu Stream Realty as parties.

#### Preliminary Matter – Service of Dispute Resolution Documents

The Tenant confirmed that on February 24, 2023, she sent two registered mail packages with the notice of dispute resolution proceeding package, amendment form, and the Tenant’s documentary evidence (collectively, the “Tenant’s Dispute Resolution Documents”) to the Landlord and to Nu Stream Realty. The Tenant submitted tracking numbers in support of service (referenced on the cover page of this decision). Tracking records indicate that the package mailed to Nu Stream Realty (address for the Landlord stated on the Two Month Notice) was delivered on March 9, 2023, while the package mailed to another mailing address of the Landlord was returned as unclaimed. The Tenant stated that she had received this second mailing address from Nu Stream Realty. The Tenant acknowledged receipt of dispute resolution documents from the Landlord in March 2023.

This hearing was originally scheduled for Friday, April 14, 2023 at 11:00 am. Records of the Residential Tenancy Branch (the “RTB”) indicate that the Landlord and an agent of the Landlord were informed at the start of the original hearing that it would be rescheduled. Records further indicate that all parties had confirmed their email addresses and the RTB emailed copies of the notice of rescheduled hearing to all parties on April 14, 2023.

Based on the foregoing, I find the Landlord was served with the Tenant’s Dispute Resolution Documents in accordance with sections 88(c) and 89(1)(c) of the Act. Pursuant to section 90(a) of the Act, I find the Landlord is deemed to have received the Tenant’s Dispute Resolution Documents on the fifth day after mailing, or March 1, 2023. I note that according to Residential Tenancy Policy Guideline 12. Service Provisions, where a document served by registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I find the Landlord was sufficiently served with notice of this rescheduled hearing by the RTB on April 14, 2023 pursuant to section 71(2)(b) of the Act.

Having found the Landlord to be deemed served with the Tenant’s Dispute Resolution Documents and to be sufficiently served with notice of this rescheduled hearing, I directed this hearing to proceed in the Landlord’s absence.

#### Preliminary Matter – Dismissal of the Landlord’s Application

Rules 7.3 and 7.4 of the Rules of Procedure state:

##### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

##### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party’s agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Landlord did not attend this hearing to present evidence regarding the merits of her application. Accordingly, I dismiss the Landlord’s application without leave to re-apply.

### Preliminary Matter – Severing the Tenant's Unrelated Claims

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

#### **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the 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.

(emphasis underlined)

In the Tenant's application, the Tenant has applied to cancel a notice to end tenancy and has included other claims. Aside from the claim to recover the filing fee, I find the Tenant's other claims in her application are unrelated to the Two Month Notice. Pursuant to Rule 6.2 of the Rules of Procedure, I sever and dismiss the Tenant's unrelated claims with leave to re-apply.

### Preliminary Matter – Landlord's Onus of Proof for Notice to End Tenancy

I have reviewed a copy of the Two Month Notice submitted into evidence by the Tenant. I find it is signed by Nu Stream Realty on behalf of the Landlord and has an effective date of April 30, 2023. I find the Two Month Notice complies with the requirements of section 52 of the Act in form and content.

I find the stated reason for ending the tenancy is that the child of the landlord or the landlord's spouse will occupy the rental unit. Pursuant to section 49(3) of the Act, a landlord is permitted to end a tenancy if the landlord or a close family member of the landlord intends, in good faith, to occupy the rental unit. Under section 49(1) of the Act, a close family member includes a child of the landlord or the landlord's spouse.

The Tenant indicated that she received a copy of the Two Month Notice on February 11, 2023. Records of the RTB indicate the Tenant made her application to dispute the Two

Month Notice on February 13, 2023. I find the Tenant made her application within the 15-day limit required under section 49(8)(a) of the Act.

Where a tenant has applied to dispute a notice to end tenancy, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove the reasons for ending the tenancy. Rule 6.6 states:

**6.6 The standard of proof and onus of proof**

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.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

(emphasis underlined)

The Landlord did not attend this hearing to present evidence to support her reasons for ending the tenancy under the Two Month Notice, as required under Rule 6.6 and 7.4 of the Rules of Procedure, or to demonstrate good faith in issuing the Two Month Notice. Under these circumstances, I find the Landlord has not discharged her onus of proof, and there is insufficient evidence for me to uphold the Two Month Notice. Accordingly, I order that the Two Month Notice be cancelled and of no force or effect.

As the Two Month Notice has been set aside, I grant the Tenant reimbursement of her filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenant to deduct \$100.00 from rent payable to the Landlord for the month of May 2023.

Conclusion

The Two Month Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

Pursuant to section 72(2)(a) of the Act, the Tenant is authorized to deduct \$100.00 from rent payable to the Landlord for the month of May 2023, on account of the filing fee awarded.

The Tenant's remaining claims are severed under the Rules of Procedure and dismissed with leave to re-apply. Leave to re-apply does not extend any applicable limitation periods.

The Landlord's application is dismissed without leave to re-apply.

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: April 21, 2023

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Residential Tenancy Branch