



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL OLC

This dispute relates to the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. Cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 20, 2023 (2 Month Notice),
2. Order directing landlord to comply with the Act.

The attended the teleconference hearing. The parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing. The parties were also provided an overview of the hearing process. I have only considered the evidence that was served in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) and relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The landlord confirmed that they were served with the tenants' documentary evidence. The tenants stated that they were not served by the landlord or their agent with any documentary evidence. I find the landlord was sufficiently served with documentary evidence.

Preliminary and Procedural Matters

The parties were advised that the decision would be sent to the email addresses confirmed during the hearing for the parties.

In addition, although I mentioned a filing fee, no filing will be granted as the tenants had their filing fee waived already and accordingly, there is no filing fee to return.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- Should the landlord be directed in any way under the Act?

Background and Evidence

A fixed-term tenancy began on February 1, 2021, and converted to a month-to-month tenancy after January 30, 2022. A copy of the 2 Month Notice was submitted in evidence. The 2 Month Notice is dated January 20, 2023 and has an effective vacancy date listed as March 31, 2023. The reason stated on page 2 is as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	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).
Please indicate which close family member will occupy the unit.	
<input type="radio"/>	The landlord or the landlord's spouse
<input type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse
<input type="checkbox"/>	The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
<input type="checkbox"/>	All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit.

The landlord failed to indicate which of the three categories they or their close family member falls into. The tenant filed their application on January 24, 2023, when their fee waived was granted.

The parties were advised that the 2 Month Notice was not completed in the approved form and would be cancelled as a result, which I will describe further below.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, the Act provides the tenants 15 days to dispute this 2 Month Notice. The 2 Month Notice is dated January 20, 2023, and the tenants filed their application January 24, 2023. I find the tenant filed this application within the required timeline under the Act.

Therefore, the onus of proof reverts to the landlord to support that the 2 Month Notice is valid.

2 Month Notice issued by landlord – Section 52 of the Act applies in this case and states:

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.
[emphasis added]

In the matter before me, I find the 2 Month Notice was incorrectly completed by the landlord failing to indicate which of the 3 categories either they or their close family members falls into. Consequently, I find the full ground is not listed on the 2 Month Notice. In addition, I find that the 2 Month Notice is invalid because the failed to complete the specific ground they are issuing the 2 Month Notice.

Due to the 2 Month Notice being incorrectly filled out, I cancel the 2 Month Notice. I find the 2 Month Notice is of **no force or effect**.

Therefore, I ORDER the tenancy to continue until ended as per section 62(3) of the Act.

The filing fee was waived so it is not granted.

Conclusion

The 2 Month Notice dated January 20, 2023 is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 6, 2023

Residential Tenancy Branch