



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant CS (Tenant) on January 2, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 am on May 2, 2023, and was attended by the Tenant, the Landlord, the Landlord's spouse WM, and an interpreter for the Landlord, BL, who stated that they were a court certified mandarin interpreter. All testimony provided was affirmed. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to the Rules of Procedure, personal recordings of the proceedings are prohibited and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

### Preliminary Matters

#### Preliminary Matter #1

The Tenant stated that the other Applicant, JS, was an occupant of the rental unit, rather than a tenant under the tenancy agreement, and requested that the Application be amended to remove them as an applicant. As there was no disagreement from the Landlord, the Application was amended accordingly.

#### Preliminary Matter #2

As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. However, most of the documentary evidence before me from the Landlord could not be viewed or downloaded by me as it appeared to be corrupted. I advised the Landlord that after the hearing they would be provided with an opportunity to re-submit a copy of the exact documentary evidence package served on the Tenant. However, this was unnecessary as I found during the hearing that the Two Month Notice was invalid as set out below, and provided the parties with a verbal decision to that affect at the hearing.

#### Preliminary Matter #3

The Tenant requested an adjournment to secure a copy of an alleged police report. The Tenant stated that they were unaware until they received the Landlord's documentary evidence of any police incident, and have made and FOI request for a copy of the alleged report, but it is not yet available to them. I advised the Tenant that if I deemed the police report or police incident relevant to the matter of validity of the Two Month

Notice, I would consider their request further. Further consideration of this matter was not required.

Issue(s) to be Decided

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

If not, is the Landlord entitled to an order of possession pursuant to section 55(1) of the Act?

Is the tenant entitled to Recovery of the filing fee?

Background and Evidence

The parties agreed that two previous Two Month Notices had been served on the Tenant by the Landlord in July of 2022. The Landlord and their spouse stated that they served these notices because the Landlord wished to have their spouse's daughter, as well as other family members from China, occupy the rental unit as their spouse has cancer and wants to visit with their family.

A hearing was held on December 12, 2022, regarding the validity of the previously issued Two Month Notices, and on December 13, 2022, a decision was rendered granting the Tenant's Application seeking cancellation of those notices. In that decision, the Arbitrator found that it was more likely than not that the Two Month Notices had been issued because the Landlord was facing financial hardship due to not receiving the amount of rent they desired for the rental unit, and that they intended to re-rent the rental unit at a much higher rental rate. They also found that the Landlord had failed to satisfy them that the Two Month Notices were issued in good faith.

The Landlords filed an Application for Review Consideration with the Residential Tenancy Branch (Branch) on December 14, 2022, which was dismissed on December 16, 2022.

The parties agreed that the Two Month Notice now before me for consideration was personally served on December 30, 2022. The Two Month Notice is signed and dated December 12, 2022, has an effective date of February 28, 2023, and states that the father or mother of the Landlord or the Landlord's spouse will occupy the rental unit.

I asked the Landlord what had changed since the issuance of the previous Two Month Notices, or the previous hearing on December 12, 2022, regarding the validity of the previous Two Month Notices, which would warrant service of another Two Month Notice. They stated that they were not guaranteed to be successful at the previous hearing on December 12, 2022, because their documentary evidence was excluded from consideration by the arbitrator due to improper service, so they drafted a new Two Month Notice. The Landlord stated that as the arbitrator ruled in favor of the Tenant, they served the new Two Month Notice and made sure to serve their evidence correctly, as they did not want to make the same mistake as last time and have their evidence excluded from consideration.

I asked the Landlord if the Two Month Notice dated December 12, 2022, had been served for the same reasons as the previous Two Month Notices, and they stated that it had, because they still want their spouse's family members to come over from China and their previous Two Month Notices for this same reason were cancelled by the arbitrator because their documentary evidence was excluded from consideration.

### Analysis

There is a principle in law called *res judicata*. It means that where a matter has previously been judged on its merits, it cannot be reargued again. I find that this applies to the current issue, and whether the Landlord has grounds to end the tenancy by way of a Two Month Notice because they want their spouse's family members from China to reside in the rental unit. Two previous notices to end tenancy were issued by the Landlord for this purpose on July 16, 2022, and July 22, 2022. While those notices stated that it was the Landlord or their spouse who intended in good faith to occupy the rental unit, the arbitrator stated the following in their decision, which I have reproduced as written:

The landlord testified under oath that her husband has cancer, and they need their family to come from China. The landlord's intention is to have her family—the landlord's husband's eldest daughter and others—occupy in the rental unit. They hope to have the family living there to assist with caring for her husband.

The arbitrator also stated that in the absence of any evidence that something had changed with regards to the Landlord's spouse's cancer diagnosis and associated care needs, that the Landlord had failed to satisfy them that the Two Month Notices were served in good faith, that it was more likely than not that the Two Month Notices

had been served because due to financial hardship, they wanted more rent than the Tenants were willing to pay, and that they were more likely than not going to rent out the rental unit for more rent. The previously issued Two Month Notices were cancelled as a result.

I appreciate that the grounds selected on the previously issued Two Month Notices are different from the ground selected on the Two Month Notice now before me. However, it is clear to me from the decision dated December 13, 2022, and the affirmed testimony of the Landlord and their spouse at the hearing, that the fundamental basis for the issuance of the Two Month Notices has not changed. At the hearing I advised the parties of my decision to cancel the Two Month Notice. The Landlord and their spouse then attempted to recant and change their testimony with regards to why the Two Month Notice had been served and whether there had been any change in circumstances since the previous Two Month Notices were served or the date of the previous decision. They stated that they had not understood my questions and therefore answered them incorrectly. However, I clarified with their interpreter, who advised me under affirmation that they were a court certified interpreter, whether they had understood my question and accurately interpreted it, and they stated that they had. I asked them if they had accurately interpreted for me the responses of the Landlord and their spouse, and they stated that they had.

Based on the above, and as the answers given by the Landlord and their spouse clearly and coherently answered the specific questions asked, there is no doubt in my mind that the Landlord and their spouse accurately understood my questions and answered them honestly when first asked. I find that the original answers given by them are therefore more credible and reliable than their later statements that they did not understand the questions and that the circumstances surrounding the reasons for the issuance of the Two Month Notice had in fact changed. I find it more likely than not that these later statements were an attempt by the Landlords to avoid the consequences of my decision.

The previously issued Two Month Notices, which I am satisfied were served for the same reason as the Two Month Notice now before me, were not dismissed on technicalities, such as lack of service or failure to comply with the form and content requirements set out under section 52 of the Act. Instead, the substantive issue of why the Two Month Notices had been served, was heard, and the arbitrator determined that the notices had not been served in good faith and it was more likely than not that the

Landlord wanted to re-rent the unit at a higher rental rate, than have it vacated so that they or their family members from China could occupy the unit for residential purposes.

I am satisfied that the issuance of the Two Month Notice before me is an attempt by the Landlord to rehabilitate Two previously cancelled Two Month Notices, issued for the same substantive reasons, occupancy by the Landlord's spouses' family from China, and avoid the consequences of the previously issued decision. I find that *res judicata* therefore applies because the same substantive legal question has been decided, the previously issued decision, which I am satisfied creates estoppel in this matter, was final, and that the parties to that decision or their privies were the same persons as the parties now before me in this proceeding.

As a result of the above, I therefore grant the Tenant's Application seeking cancellation of the Two Month Notice. The Landlord is also cautioned that further issuances of Two Month Notices for this same purpose *may* constitute an abuse of process or a breach to the Tenant's right to quiet enjoyment, or both.

### Conclusion

I grant the Tenant's Application and the Two Month Notice dated December 12, 2022, is cancelled and of no force or affect.

Although the Tenant sought recovery of the \$100.00 filing fee in the Application, they withdrew this claim at the hearing when the Two Month Notice was cancelled. As a result, I have not awarded the Tenant recovery of this fee.

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

Dated: May 10, 2023

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Residential Tenancy Branch