



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

## DECISION

**Dispute Codes**      CNL-MT, FFT / CNR, FFT

### **Introduction**

This hearing dealt with two applications of the tenants pursuant to the *Residential Tenancy Act* (the Act). In their first application (Application 950), the tenants seek:

- to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- to recover the filing fee for this application from the landlord pursuant to section 72.

In their second application (Application 504), the tenants seek:

- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing, the parties advised me that the tenants moved out of the rental unit on January 30, 2023. The tenants stated that they wanted to continue with both applications, as they understood that, if the two-month notice was found not to have been issued in good faith, they were entitled to 12 months compensation from the landlord.

I advised the tenants that this was not correct. Section 51 of the Act allows for a tenant to make such a claim, in the event the rental unit is not used for the purpose stated on the 2 Month Notice. Whether the 2 Month Notice was used in good faith is not relevant.

However, if the tenants wanted this relief, they needed to state it on their notice of dispute resolution proceeding form. They did not do this and, as such, the landlord was not provided with notice of the tenants' intentions for the hearing. The landlord is entitled to such notice so she can adequately prepare her response.

As such, and as the issue of the validity of the two-month notice is no longer relevant given that the tenants have moved out of the rental unit, I dismiss Application 950 without leave to reapply.

Despite the tenancy being over, I cannot dismiss Application 504 due to section 55(1.1) of the Act, which requires that I issue a monetary order for the amount of unpaid rent in the event I find the 10 Day Notice was issued for a valid reason.

### **Issues to be Decided**

Are the tenants entitled to:

- 1) an order cancelling the 10 Day Notice;
- 2) recover the filing fee?

If not, if the landlord entitled to a monetary order for the unpaid rent?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting May 31, 2019. Monthly rent was \$2,436 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$1,200 and a pet damage deposit of \$1,000, which the landlord has returned to the tenants.

The landlord served the tenant with the 2 Month Notice on November 30, 2022. It specified an effective date of February 14, 2023. The tenants did not pay any rent for January 2023. They testified that they were allowed to withhold this rent pursuant to section 51 of the Act which entitles them to one month's free rent.

On January 5, 2023, the landlord served the tenant with what the landlord described as a "redacted" version of the 2 Month Notice, changing the reason for ending the tenancy and the effective date.

The tenants disputed the 2 Month Notice on January 10, 2023.

The landlord testified that the tenants did not communicate to her whether or not they intended to vacate at the end of January as they had previously indicated. As such, and as the tenants disputed the 2 Month Notice, she understood that the tenants had improperly withheld January rent. She served the tenants with the 10 Day Notice on January 17, 2023 by posting it on the door of the rental unit. It listed the rental arrears owed as of January 1, 2023 as \$2,436.

The tenants disputed the 10 Day Notice on January 20, 2023, and then vacated the rental unit on January 30.

### **Analysis**

Section 51(1) of the Act entitles tenants who are served with a 2 Month Notice to an amount equal to one month's rent. Section 51(1.1) of the Act permits tenants to withhold the *last* month's rent instead of being paid this amount by the landlord.

As the tenants vacated the rental unit on January 30, 2023, I find their last month's rent was due on January 1. As the tenants were served with a 2 Month Notice, they were entitled to withhold their last month's rent. As such, the tenants acted in accordance with the Act by not paying January's rent.

The tenants did not owe any rent at the time the 10 Day Notice was issued. It is therefore invalid. I order that it is cancelled and of no force or effect.

I decline to order that the landlord reimburse the tenants' filing fee. In circumstances, I find that the landlord acted reasonably in issuing the 10 Day Notice. By disputing the 2 Month Notice after withholding January's rent, the tenants signaled to the landlord they did not intend to move out in accordance with the 2 Month Notice. Had they not moved out, they would not have been entitled to withhold January's rent and the landlord would have been entitled to its payment.

As the tenants' need to file Application 504 was ultimately due to their own actions, I do not find it appropriate to require the landlord to bear the cost of the filing fee.

### **Conclusion**

Application 950 is dismissed, in its entirety, without leave to reapply.

The Notice is cancelled and of no force or effect.

I dismiss the tenants' application to recover the filing fee for Application 504, without leave to reapply.

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: May 5, 2023

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Residential Tenancy Branch