



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, RP, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution on January 9, 2023 seeking a cancellation of the Two-Month Notice to End Tenancy for the Landlord's Use of Property (the "Two-Month Notice"). They also applied for repairs to the rental unit, 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 May 5, 2023.

The Landlord attended the hearing; the Tenant did not attend. In the conference call hearing I explained the process and offered the Landlord the opportunity to ask questions. The Landlord presented oral testimony and referred to their evidence they had previously served to the Tenant.

### Preliminary Matter – Tenant's attendance

The Tenant did not attend the hearing, although I left the teleconference hearing open until 10:06am to enable them to call in to this teleconference hearing scheduled for 9:30am. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding generated when the Tenant applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, an arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the Tenant's application for repairs in the rental unit, with leave to reapply on this issue.

Issue(s) to be Decided

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

Is the Landlord entitled to an order of possession pursuant to s. 55 of the *Act*?

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

Background and Evidence

The evidence, as it appears in the Tenant's record, shows the Landlord issued and served the Two-Month Notice to the Tenant on October 17, 2022. The notation on the document says "as per our text of said date."

On their Application, the Tenant provided the date of service of this document as December 29, 2023. On the Application, the Tenant provided as follows:

I was sent a text message in October from my landlord, who claimed they had sold the property, or had made the decision to sell, and I should seek new housing. When I asked them to produce an eviction notice stating the condition of the sale has been satisfied, they refused. On Dec 29<sup>th</sup>/22, I woke up to an eviction notice slid, under my door. My landlord signed the document 17/10 even though it was signed & delivered 29/12. Also the reason for the eviction has changed, and they've stated a family member will be living there.

The Landlord indicated the end-of-tenancy date for February 1, 2023. On page 2 of the document, the Landlord indicated that their close family member – the father or mother of the landlord or landlord's spouse – will occupy the rental unit.

In the hearing, the Landlord reviewed the circumstances by which they served the Two-Month Notice to the Tenant. They served the Two-Month Notice on December 29, and "it was backdated to the date of the text". In the Landlord's evidence is a copy of the text message they sent on December 16, advising the Tenant they would be able to stay until the end of January.

Also in the Landlord's evidence is a document titled "consent to withdraw", signed by the Landlord and dated April 2, 2023. This shows the Landlord's

consent to withdrawal of the application to dispute a Notice to End Tenancy made by the tenant, [Tenant name]. The \$100 filing fee will be reimbursed to the tenant.

In the hearing, the Landlord stated they “offered to withdraw because a couple of things were invalid with the eviction.” The Landlord stated that their plans had changed, and they decided to sell the rental unit for financial reasons.

The Landlord also provided in their evidence a secondary Two-Month Notice they served to the Tenant on April 10, 2023, for the end-of-tenancy date of June 30, 2023. This concerns the Landlord’s sale of the rental unit. The Landlord provided the name of the purchaser on page 2 of the document, and also provided the document titled ‘Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession’, showing the Purchaser’s request for vacant possession of the rental unit by June 30, 2023.

### Analysis

The Act s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice “if a landlord or close family member of the landlord intends in good faith to occupy the rental unit.” Following this, s. 55 provides that I must grant to the Landlord an order of possession if the Two-Month Notice document complies with the s. 52 form and content requirements, and I dismiss the Tenant’s Application or uphold the Landlord’s notice.

In this matter, the Landlord bears the onus to prove the reason for ending the tenancy is valid and undertaken in good faith. The Landlord gave an indication in the hearing that they intended to treat the Two-Month Notice in question as withdrawn due to the subsequent sale of the rental unit.

I find the Landlord intended to withdraw the Two-Month Notice and sought to have the Tenant consent to a cancellation of this hearing. The Tenant did not consent to this; however, I find this was a move by the Landlord to tell the Tenant that the issue of needing to end the tenancy for the reasons indicated on that Two-Month Notice were no longer in effect. I appreciate the Landlord’s plans had changed by early April 2023. With this indication stated plainly to the Tenant, I find the Two-Month Notice at issue in this hearing is invalid.

Additionally, in the hearing the Landlord stated “a couple of things were invalid with the eviction”. I find they were referring, in different terms, to their stated reasons for ending the tenancy, which were alternately no longer valid (due to their subsequent sale of the rental unit), or, alternately, the flawed service of the Two-Month Notice.

In the hearing, the Landlord did not present evidence on their close relatives' need for the rental unit. I find the Landlord's reasons, such as they were in late 2022, are no longer valid.

The Two-Month Notice is cancelled, the tenancy shall not end by reason of the Landlord serving this document to the Tenant on December 29.

The Tenant was successful in this Application; therefore, they are entitled to recover the \$100 Application filing fee. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

### Conclusion

In the absence of the Tenant, I dismiss their request for repairs, without leave to reapply.

For the reasons above, I order that the Two-Month Notice issued by the Landlord on December 29, 2022 is cancelled, and the tenancy shall not end for the reason indicated on that document.

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: May 24, 2023

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Residential Tenancy Branch