



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for the cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice").

The Tenant also applied for the Landlord's compliance with the legislation and/or tenancy agreement, and recovery of the Application filing fee.

The Landlord completed an application on April 16, 2024 for an order of possession for the rental unit, from the same Two-Month Notice. The Landlord wants recovery of their Application filing fee.

The Tenant and the Landlord attended the scheduled hearing.

### Service of Notice of Dispute Resolution Proceeding

The Tenant served the Notice of Dispute Resolution Proceeding to the Landlord via registered mail on April 17, 2024. The Tenant provided a record to show that registered mail was delivered to the Landlord on April 22, 2024. This is within the timelines established in the *Act*, and via an established service method. I find the Tenant served the Notice of Dispute Resolution Proceeding in proper fashion as required.

The Tenant served prepared documents as evidence to the Landlord on May 25, 2024. The Tenant described serving this to the Landlord in person; however, the Landlord would not accept this service and instructed the Tenant to use registered mail. In the hearing the Landlord referred to a hearing timeline, making this evidence late. The Landlord returned the package left to the Tenant directly to them.

I find the Tenant served their evidence to the Landlord as required, and deem the method they utilized – *i.e.*, in-person service – sufficient for the purposes of the *Act*.

The Tenant complied with the 14-day timeline as set out in the *Residential Tenancy Rules of Procedure*.

The Landlord served their Notice of Dispute Resolution Proceeding, generated from their Application that was crossed to that of the Tenant, via registered mail and the Tenant acknowledged this in the hearing. The Tenant acknowledged receipt of this document, as well as the Landlord's prepared documentary evidence for this hearing.

### **Preliminary Matter – Landlord's compliance**

In the hearing, the Tenant acknowledged the primary issue was the end-of-tenancy notice served to them by the Landlord.

The Tenant applied on one other ground, being the Landlord's compliance with the legislation/tenancy agreement. They provided documentation on miscellaneous issues they feel should be rectified in this tenancy. They acknowledged that the primary issue was that of the possibility of the tenancy ending; therefore, I find the Tenant consented to my severing of the issue on Landlord's compliance.

By the *Residential Tenancy Branch Rules of Procedure* Rule 2.3 and Rule 6.2, I remove the issue from consideration. I decline to make findings and necessary orders on these other issues; however, I instructed the parties that the concerns the Tenant raised, responded to by the Landlord in the hearing where relevant, may receive consideration where related to the matter of the Landlord seeking to end the tenancy.

### **Issues to be Decided**

- Is the Two-Month Notice valid? If valid, is the Landlord entitled to an Order of Possession?

### **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant to my decision.

In the hearing, the Tenant stated there was no documented tenancy agreement in place. They have lived at the rental unit since February 1, 2014. The Tenant lives in the top half of a two-storey rental unit property. The starting rent was \$2,000 and the

rent increased over the course of the tenancy in what the Tenant submitted was an illegal manner.

The Tenant maintained that a second tenant lived with them in the rental unit from the very beginning, with the full knowledge of the Landlord. The Landlord stated their knowledge that the Tenant D.D. was the only tenant in the rental unit because they are the sole person from whom rent is paid.

The Landlord served the Two-Month Notice on March 26, 2024. The Landlord set the end-of-tenancy date at May 31, 2024. Page 2 of the document has the Landlord's indication that "The Landlord or the landlord's spouse" will occupy the rental unit.

In the hearing, the Tenant set out that the second tenant – who they reiterated was in the rental unit from the start of the tenancy – was not named on the Two-Month Notice, thereby invalidating that document. On the Tenant's Application for this hearing, they did not name the second individual as a second applicant. In the April 9, 2024 signed document the Tenant presented to the Residential Tenancy Branch, they referred to this second individual, F.I., as "room mate friend". In a secondary letter, the Tenant referred to F.I., as "room mate".

The Landlord, who lives a short distance away from the rental unit, presented that they were selling their own home. Because of this sale that was pending, they needed to live in the rental unit. The Landlord presented a copy of a purchase and sale agreement, setting out a possession date of June 25, 2024. In their affidavit of May 6, 2024, the Landlord described the purchaser "requesting a closing date of June 2024."

In the hearing the Tenant drew attention to the dates. The Landlord stated their sale process was "on hold" pending this hearing outcome. This purchase/sale agreement was entered into after the Landlord served the Two-Month Notice, apparently knowing that the tenancy would not have ended by the final date. The Tenant confirmed, via questioning the Landlord, that this purchase/sale agreement stood as an offer, not accepted by the Landlord with no deposit paid. The Tenant submitted that the finality of the sale could not be shown by the Landlord; the Landlord in response stated this agreement shows their true intention to sell the property, needing the rental unit for themselves prior to any sale being finalized.

As summarized by the Tenant, this evidence in the form of a purchase/sale agreement is evidence only of an offer. It is not evidence of the Landlord actually moving out from their own home or intending to occupy the rental unit. The Landlord maintained this

was information that their own home had already been listed for sale, underlining their need for the rental unit for their own occupancy.

The parties had different assumptions and interpretations on further points raised by the Tenant in the hearing. The Tenant cited the Landlord's previous "unlawful acts" regarding the tenancy, such as raising the rent, a third occupant to move into the rental unit, and need for renovations. The Landlord stated these were issues raised by the Tenant only in retaliation for the Landlord seeking to end the tenancy, *i.e.*, not problematic at the time. The Landlord explained their need for renovations in the rental unit as legitimate given the age of the rental unit property, and not standing as the reason they seek to end this tenancy.

## **Analysis**

### **Is the Two-Month Notice valid? If valid, is the Landlord entitled to an Order of Possession?**

For this tenancy, I find there is one proper named Tenant, as set out by the Landlord on the One-Month Notice. I find the Tenant's roommate is that individual who attended the hearing as a witness, F.I. The fact that the Tenant's roommate was not named on the Two-Month Notice does not invalidate the document by default. I find the Landlord was correct that an order of possession would refer to 'a tenant and any other occupant in the rental unit.'

The *Act* s. 49 sets out that a landlord may end a tenancy if a landlord or a close family member is going to occupy the rental unit. Upon receipt of a two-month notice for this purpose, a tenant may, within 15 days, dispute an end-of-tenancy notice by applying formally for a hearing. The Tenant here disputed the Two-Month Notice on April 12, 2024; therefore, I find they applied within the timeframe set out in the *Act*.

The Landlord described their need for the rental unit; however, I find this need is contingent on the sale of their own home that is not yet finalized. The Landlord reported on no recent updates in regard to a contract they submitted as evidence. The listed final date, I find, is no longer in place. The Landlord stated there was no deposit paid. I conclude that a final sale, with plans for a completed transaction, must be in place before the Landlord ends this tenancy. In sum, the Landlord is wanting the tenancy to end; however, this is based on tentative plans, and there is no guaranteed sale in place.

The Tenant presented miscellaneous other matters affecting the tenancy. I find these may impact the relationship; however, I am not satisfied that these other reasons are

serving as reasons for the Landlord wanting to end the tenancy, though they certainly raise the Tenant's concern about the Landlord's motivations.

I grant no order of possession to the Landlord where they did not provide solid and incontrovertible evidence of the sale of their own home, hence their need for the rental unit for their own occupancy.

In sum, I grant the Tenant's Application; therefore, I find the Landlord is not entitled to an order of possession. I dismiss the Landlord's Application in its entirety, without leave to reapply.

I grant the Tenant's claim for the Application filing fee. I order that the Tenant may reduce their July 2024 rent by the amount of \$100 as compensation.

The Two-Month Notice of March 30, 2024 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

## **Conclusion**

I grant the Tenant's Application; therefore, the Two-Month Notice is cancelled and of no force or effect. I dismiss the Landlord's Application for an order of possession for this reason.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 11, 2024

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Residential Tenancy Branch