



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNR, CNL, CNC

### **Introduction**

This hearing dealt with two of the tenant's applications pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**10 Day Notice**") pursuant to section 46;
- the cancellation of the One Month Notice to End Tenancy for Cause (the "**One Month Notice**") pursuant to section 47;
- the cancellation of the Two Month Notice to End Tenancy for Landlords' Use of Property (the "**Two Month Notice**") pursuant to section 49;

All parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord were represented by TN who is landlord HTN's brother and landlord TTN's son.

The tenant testified, and TN confirmed, that the tenant served the landlords with the notice of dispute resolution package and supporting documentary evidence. TN testified, and the tenant confirmed, that the landlords served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

### **Preliminary Issue – Landlord's Cross Application**

The parties advised me that the landlord's application for an order of possession based on the 10 Day Notice, One Month Notice, and Two Month Notice was scheduled for March 7, 2022. This application also dealt with two monetary claims for rental arrears and loss of income (the "**landlords' application**")

I advised the parties that the tenant's applications and the landlords' application dealt with many of the same issues and that they should be heard by the same arbitrator. As such, I advised the parties that I would preside over the March 7, 2022 hearing as well.

At this hearing, there was insufficient time to deal with the validity of the 10 Day Notice. As such, I stated that this issue would be dealt with at the March 7, 2022 hearing. However, as I have found that the Two Month Notice is valid, and have issued an order of possession, it is not necessary for me join these applications with the landlords'

application or schedule these applications to be heard at the same time as the landlord's application. For the reasons set out below, the issue of the validity of the 10 Day Notice is moot. As such, this decision is a final decision, and the landlords' application will be restricted to their monetary claims.

### **Preliminary Issue – Identity of Landlord TTN**

At the outset of the hearing, the tenant stated that TTN is the name of the individual with whom she entered into the tenancy agreement, and that TTN is the father of the landlord HTN. She testified that he passed away in 2018.

TN stated that TTN is his and HTN's mother, not their father, and that she is alive and well. HTN confirmed this. The person who identified herself as TTN stated that she was alive and that her name was TTN. She, TN, and HTN all testified that their father was SN and that he passed away in 2018. They agreed that SN was the tenant's main point of contact when the tenancy started.

I accept the testimony of TN and HTN that TTN is their mother and not their father. I accept the individual who identified herself as TTN's evidence that she is who she says she is. The tenant has not provided any basis for me to find to the contrary. I am satisfied by the sworn testimony of TN, HTN, and TTN that SN has passed away, but TTN is alive and well.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) an order cancelling the 10 Day Notice;
- 2) an order cancelling the One Month Notice; and
- 3) an order cancelling the Two Month Notice?

If not, are the landlords entitled to an order of possession?

### **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.

There is no written tenancy agreement between the parties. The tenant and her ex-partner RC moved into the rental unit on June 1, 2017. The parties agree that the tenant and RC dealt mostly with SN at the start of the tenancy. After SN died HTN took over as the main point of contact with the tenant. The rental unit is the basement suite of a single-detached house. The upper floor is also rented out by the landlords. Monthly rent is \$1,400. The tenant testified that RC paid SN a security deposit of \$700 at the start of

the tenancy. TN stated that this was incorrect, based on what he know of his father's practices when renting out rental units.

The tenant testified that she had a receipt from SN given to RC when the tenancy was entered into showing that a \$700 deposit was made. She testified that she was unaware that the issue of whether or not a security deposit was paid would be in dispute. I granted her leave to upload a copy of the receipt into evidence after the hearing. She did this. However, in light of the fact there is another hearing on March 7, 2022, I make no determination as to the amount of security deposit paid. I will make such a determination in my decision following the March 7, 2022 hearing.

On November 22, 2021, the landlord served the tenant with the Two Month Notice. It was dated November 20, 2021, and specified an effective date of January 31, 2022. It set out the reason for ending the tenancy as:

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 close family member intends in good faith to occupy the rental unit.

The landlords provided a copy of the buyers notice to seller for vacant possession dated November 15, 2021, which indicated that the buyer and TTN had entered into a contract of purchase and sale up the residential property on November 9, 2021, and that the buyer intends in good faith to occupy the residential property.

The tenant argued that the landlord had not, in fact, sold the residential property. She alleged that the landlords had fabricated the sale as a means to end her tenancy. She made this argument despite the fact that a contract of purchase and sale between the purchaser and TTN had been provided to her (and has been entered into evidence) and despite that TN is a licensed realtor who acted for TTN during the sale.

In support of this allegation, the tenant submitted a printout that TN had provided to her of what appears to be an MLS property listing which shows the residential property listed for sale on November 8, 2021 and indicates that it was sold on November 10, 2021. She argued that the written description of the residential property did not include description of the rental unit, which is located in the basement. She testified that the residential property had previously been sold in 2010, and that the basement was converted into a rental unit after that date. She suggested that the landlords and/or TN had photoshopped the MLS listing from the 2010 sale (which would not have included a description of a basement suite) to make it look like the property was sold in 2021.

The tenant also testified that TN brought people who purported to be prospective buyers into the rental unit after November 11, 2021.

TN flatly denied the tenant's allegations he testified that TTN had not sold the residential property as indicated on the MLS printout, and that he had manipulated the document in

any way. He testified that as a realtor he had complied with all the necessary steps when closing the sale of the residential property. He testified that the buyer is a real person, has no prior relationship with the landlords, and contracted to buy the residential property. He testified that as a result of the tenant disputing the Two Month Notice, the closing date of the sale of the residential property has been delayed. The landlords submitted an amendment to the contract of purchase in sale to this effect.

TN stated that he was at a loss as to how he could prove that the residential property had actually been sold, if his testimony as one of the realtors involved in the sale, a signed copy of the contract of purchase, and sale and a signed copy of the buyers notice to seller for vacant possession would not be enough.

During the hearing, it occurred to me that if the sale was in fact a wholesale fabrication of the landlord and TN, then there would be no record of it available online on websites which were accessible by the public. I put this to the parties, and they both agreed. I then stated that the most expeditious way of resolving the question of whether the sale of the residential property was a fabrication would be for me to go to such a site and see if the sale had been recorded. Both parties agreed. As such I went to [zealty.ca](https://www.zealty.ca) and entered the civic address of the residential property. The result showed that the residential property was listed for sale on November 8, 2021 and sold on November 10, 2021. I advised the parties of this, and asked the tenant if this would change her position as to the validity of the Two Month Notice. She stated that it would not, and that she could “only say what [she had] said”.

On January 8, 2022, the landlord served the One Month Notice on the tenant. This notice set out the reason ending the tenancy as “failure to allow access when given adequate notice and legitimate reason for entry”.

TN testified that on January 7, 2022, he posted a notice of entry onto the door of the rental unit advising the tenant that an appraiser would need access to the rental unit on January 9, 2022 as part of the closing process of the sale of the residential property.

TN testified he followed up on this notice via text message with the tenant and that the tenant indicated to him that she would not allow the appraiser entry into the rental unit.

The tenant confirmed this. She testified that she understood this notice to be a further attempt to harass her, and that she did not think it was for valid reasons, as the occupants of the upper unit did not receive any such notice.

### **Analysis**

Based on the landlords’ and TN’s testimony, corroborated by the documentary evidence submitted by the landlords, as well as the results of the [zealty.ca](https://www.zealty.ca) search, I find that TTN entered into a contract of purchase and sale to sell the residential property on November 11, 2021.

Even absent the results of the zealty.ca search, I would not be persuaded by the tenants claims that the sale of the residential property was fabricated as it means to evict her. The documentation submitted as proof of the sale appears genuine, and I do not think that the lack of description of a basement suite in the residential property means tat the MLS listing entered into evidence is a fabrication.

Rather, I find it is more likely that TN did not update the listing from the 2010 sale either out of inadvertence, because he did not think it was important, or because the existence of the basement suite might not be permissible pursuant to local bylaws.

Section 47(5) of the Act states:

- (5) A landlord may end a tenancy in respect of a rental unit if
  - (a) the landlord enters into an agreement in good faith to sell the rental unit,
  - (b) all the conditions on which the sale depends have been satisfied, and
  - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
    - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
    - (ii) the purchaser 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.

I find that the buyers notice to seller for vacant possession (which I find to be genuine) is sufficient to discharge the landlords' evidentiary burden to prove that these requirements have been met.

I have reviewed the Two Month Notice and find that it complies with the section 52 form and content requirements. I find that TTN, as a registered owner of the residential property, is properly named as landlord on the Two Month Notice.

As such, I find that the Two Notice is valid and should be upheld. I dismiss the portion of the tenant's applications seeking to cancel it.

Section 55 of the Act states:

**Order of possession for the landlord**

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As such, I order that the tenant provide the landlords with vacant possession of the rental unit within two days of being served a copy of this decision and attached orders by the landlord.

As I have ordered the tenancy is ended, the issue of the validity of the One Month Notice and 10 Day Notice is moot. I make no determination about their validity.

### **Conclusion**

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlords within two days of being served with a copy of this decision and attached order(s) by the landlords.

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: March 4, 2022

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Residential Tenancy Branch