



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution made on March 28, 2022. The Tenant applied for the following relief pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 23, 2022 (the Two Month Notice); and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and provided a solemn affirmation at the beginning of the hearing. The Tenant did not attend the hearing.

The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding package by registered mail. The Landlord also acknowledged she did not submit documentary evidence in response to the Application.

The Landlord was advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution proceedings.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to an order cancelling the Two Month Notice?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The burden of proving the basis for issuing a notice to end tenancy rests with the Landlord. Accordingly, the Landlord provided affirmed testimony in relation to the tenancy and the Two Month Notice in the Tenant's absence.

The Landlord testified that the tenancy began on February 27, 2022, and was expected to continue for a fixed term until February 28, 2023. Rent of \$1,100.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$550.00, which the Landlord holds. A copy of the tenancy agreement between the parties was submitted into evidence.

The Landlord testified that the Two Month Notice, which had an effective date of May 31, 2022, was served on the Tenant in person on March 27, 2022. The Two Month Notice was issued on the basis that the rental unit would be occupied by the Landlord. A copy of the Two Month Notice was submitted into evidence.

The Landlord testified the Tenant sent her a message on May 30, 2022, advising that the Tenant accepts the Two Month Notice and will vacate the rental unit by November 30, 2022.

As noted above, the Tenant did not attend the hearing to provide testimony and make submissions.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 49(3) of the Act permits a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit by issuing the appropriate notice to end tenancy. The landlord bears the burden of proving the basis for issuing a notice to end tenancy under this section.

However, section 49(2) of the Act confirms that when a tenancy is for a fixed term, a notice to end tenancy issued under section 49(3) of the Act must not have an effective date that is earlier than the date specified as the end of the tenancy. The language in the Act is mandatory. In other words, a tenancy under a fixed-term tenancy agreement cannot be ended earlier than the date specified as the end of the tenancy when the notice to end tenancy is issued for landlord's use of the rental unit.

Considering the above, I find that the Landlord was not entitled to issue the Two Month Notice, which had an effective date before the end of the fixed term. Therefore, I find the Landlord has not established the basis for issuing the Two Month Notice. I order that the Two Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the Act.

As the Tenant did not attend the hearing to provide testimony and make submissions, I decline to grant recovery of the filing fee to the Tenant. This aspect of the Tenant's claim is dismissed.

### Conclusion

The Two Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the Act.

The Tenant's claim for \$100.00 in recovery of the filing fee is dismissed 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: June 21, 2022

---

Residential Tenancy Branch