



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Landlord's application: OPL MNDCL-S FFL  
Tenant's application: CNL OLC FFT

### **Introduction**

This dispute relates to an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act) as follows:

1. Landlord request for order of possession,
2. Landlord monetary claim of \$9,119 for loss of rent and filing fee,
3. Tenant request to cancel 2 Month Notice,
4. Tenant request for landlord to comply with the Act, Regulation or tenancy agreement,
5. Tenant request for \$100 filing fee.

The parties and counsel for the tenant (counsel) attended the teleconference hearing. The parties were affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form. Counsel was not affirmed as they are an officer of the court. Counsel was given the opportunity to make submissions. Both parties did not have any witnesses to present at the hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to both parties and counsel.

After service was addressed, the hearing continued. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

The landlord's monetary claim was severed under Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 2.3. This Rule provides the ability to sever unrelated dispute from the main application. I find the main matter before me is whether or not the tenancy is ending based on the 2 Month Notice. Therefore, the landlord is at liberty to reapply if there is a loss of rent. The only matter to be determined at this proceeding is whether the tenancy is ending or continuing.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

### Issues to be Decided

- Should the 2 Month Notices be cancelled or upheld?
- If the 2 Month Notice is being cancelled, should the landlord be directed under the Act to do anything?
- Is either party entitled to the filing fee under the Act?

### Background and Evidence

The tenancy agreement was submitted in evidence. A month-to-month tenancy began on May 1, 2015. The parties confirmed that monthly rent is currently \$2,973 per month and due on the first day of each month.

The tenant writes that they received the 2 Month Notice on December 19, 2022 by registered mail. The tenant filed to dispute the 2 Month Notice on December 29, 2022, which is within the 15-day timeline provided for under the Act. The reason listed on 2 Month Notice states:

Reason for this Two Month Notice to End Tenancy (check the box that applies)	
<input checked="checked" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
<input type="checkbox"/>	The landlord 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.
<input type="checkbox"/>	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 a close family member intends in good faith to occupy the rental unit.
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit.

The date of the outdated 2 Month Notice used is dated 2018/06. The parties were advised that the 2 Month Notice is an outdated form and does not include the current details on the approved 2 Month Notice dated 2021/03/22.

I will address the outdated form later in this decision. The effective vacancy date listed on the 2 Month Notice was February 28, 2023, which has passed.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

When a tenant disputes a 2 Month Notice, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlords fail to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled. As the tenant filed their application on December 29, 2022, I find the tenant filed within the 15-day timeline which began on December 19, 2022.

Section 52 of the Act applies and states the following:

#### **Form and content of notice to end tenancy**

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) **when given by a landlord, be in the approved form.**  
[emphasis added]

Given the above, I find the landlord failed to use the approved form for the 2 Month Notice and instead served an outdated form from 2018 which is not the approved form under the Act at the time when the tenant was served on December 19, 2022.

Therefore, I find the landlord has failed to prove that the 2 Month Notice was valid as it was not on the approved form at the time it was served on the tenant. **I cancel** the 2 Month Notice dated December 14, 2022.

Given the above, I dismiss the landlord's application due to insufficient evidence and I grant the tenant's application.

The landlord should use the current approved forms located on the RTB website found here: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms/forms-listed-by-number>

**I ORDER** the tenancy to continue until ended in accordance with the Act.

I grant the tenant a one-time rent reduction from a future month of rent in the amount of **\$100** in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 62(3) and 72 of the Act.

I do not grant the landlord their filing fee due to their application being dismissed.

#### Conclusion

The tenant's application is successful.

The 2 Month Notice is cancelled.

The tenancy continues until ended in accordance with the Act.

The tenant is granted a one-time rent reduction in the amount of \$100 in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 62(3) and 72 of the Act.

The landlord is not granted their filing fee.

The website for the location of current approved forms has been included above.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 28, 2023