



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, LRE, FF

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) issued by the landlord, an order suspending or setting conditions on the landlord's right to enter the rental unit, and recovery of the cost of the filing fee.

The tenant attended the hearing; however, the landlord did not attend.

The tenant testified they served the landlord with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by personal service. The tenant explained they handed the documents to the landlords who live in the upper unit. I note that the landlord filed documentary evidence prior to the hearing.

Based upon the submission of the tenant, I find the landlords were served notice of this hearing and the tenant's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlords' absence.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). Further, only the relevant evidence to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice, an order suspending or setting conditions on the landlord's right to enter the rental unit, and to recovery of the filing fee paid for this application?

### Background and Evidence

The written tenancy agreement filed in evidence shows a tenancy start date of March 20, 2021 and monthly rent of \$1,750. The respondent purchased the property from the original landlord listed on the written tenancy agreement.

The tenant submitted that the landlord served them with the Notice, dated November 15, 2022, on that same date, by personal service. Filed in evidence was a copy of the Notice. The Notice was signed by one of the new landlords and the effective move-out date listed on the Notice was January 31, 2023.

The Notice listed that the rental unit will be occupied by the landlord or the landlord's spouse.

In their application, the tenant submitted that the Notice was issued in bad faith, because they currently live upstairs and are not likely to move downstairs. Additionally, the tenant stated they refused to sign a new tenancy agreement for a higher monthly rent.

### Analysis

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Rules states the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reason given on the Notice.

In this case, the Notice was issued pursuant to section 49(3) and I accept the tenant's undisputed evidence that they received the Notice on November 15, 2022. As the tenant's application was filed on November 16, 2022, I find that they disputed the Notice within the timeframe required under the Act.

In the absence of, or any evidence from, the landlord at the hearing, to support the reason listed on the 2 Month Notice, I find there is insufficient evidence to uphold the 2 Month Notice.

I therefore **ORDER** that the 2 Month Notice dated November 15, 2022, for an effective date of January 31, 2023, is cancelled and of no force or effect, meaning that the tenancy continues until it may otherwise legally end under the Act.

I allow the tenants recovery of their filing fee of \$100. I grant them a one-time rent reduction of \$100 from a future month's rent payment in satisfaction of their monetary award, notifying the landlord of when this deduction is being made. The landlord may not serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in that event.

As to the tenant's request for an order suspending or setting conditions on the landlord's right to enter the rental unit, I **dismiss** that part of the tenant's application, **with leave to reapply**, as I found the primary issue to be dealt with in this application was the tenant's request to cancel the Notice. This is allowed under Rule 2.3.

I, however, remind the landlord of section 29 of the Act. A landlord **may not** enter a tenant's rental unit **without giving a proper written notice of entry to do so**. Among other requirements, section 29(1)(b)(ii) of the Act **requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a specific time and date**. [My emphasis added]

The landlord must provide the tenant with a proper written notice to enter the rental unit, which must be at least 24 hours in advance, and in consideration of the deemed service provisions of section 90 of the Act. If the landlord chooses to attach the notice of entry to the tenant's door, the tenant is not deemed to have received that notice for 3 days and the entry may then not be earlier than 24 hours later. If the landlord chooses to send the notice by registered mail, the tenant is not deemed to have received the notice for 5 days and the entry may then not be earlier than 24 hours later.

### Conclusion

The tenant's application seeking cancellation of the landlord's 2 Month Notice of November 15, 2022 is successful as I have ordered the Notice is cancelled.

The tenant's request for an order an order suspending or setting conditions on the landlord's right to enter the rental unit is dismissed, with leave to reapply.

The landlord has been given reminders of their obligation under the Act.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 03, 2023

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Residential Tenancy Branch