



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, MNDCT, RR, PSF, LRE, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on February 8, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice);
- Compensation for monetary loss or other money owed;
- A rent reduction for repairs, services, or facilities agreed upon but not provided;
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement.

The hearing was convened by telephone conference call at 11:00 am on June 2, 2023, and was attended by the Tenant, the Tenant's advocate (Advocate), a witness for the Tenant BS, the Landlord, and a witness/support person for the Landlord GJ. All testimony provided was affirmed. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

### Preliminary Matters

In their Application the Tenant sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a Two Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. As the other claims are not sufficiently related to the Two Month Notice, I have dismissed them with leave to reapply.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Two Month Notice?

If not, is the Landlord entitled to an order of possession pursuant to section 55(1) of the Act?

### Background and Evidence

The Landlord stated that the Two Month Notice was served on the Tenant by email on January 20, 2023, and the Tenant acknowledged receipt on or about that date. Branch records show that the Tenant filed the Application seeking cancellation of the Two Month Notice on February 8, 2023.

The Two Month Notice in the documentary evidence before me is on the branch form, is signed and dated January 20, 2022, has an effective date of April 15, 2022, and states that the notice has been served because the Landlord NK, wishes to occupy the rental unit, which is located in their parents home due to a change in their family composition and their desire to be closer to their family.

### Analysis

The Tenant acknowledged receipt of the Two Month Notice on January 20, 2023, but did not dispute the Two Month Notice until February 8, 2023. As a result, I find that the Tenant failed to dispute the notice within the timeline set out under section 49(8) of the Act. Although the Tenant and their Advocate stated that there are medical reasons why the Two Month Notice was not disputed on time, the Tenant did not seek an extension to the time limit set out under section 49(8) of the Act in their Application. As a result, I cannot consider the Tenant's arguments with regards to the late filing of their Application as the hearing is limited to matters claimed in the Application.

Based on the above, I find that conclusive presumption under section 49(9) of the Act applies, and I therefore dismiss the Tenant's Application seeking cancellation of the Two Month Notice without leave to reapply. However, the signature date and the effective date on the notice are from 2022. I therefore find that the Two Month Notice does not comply with section 52 of the Act. As section 55(1)(a) of the Act requires that the notice comply with section 52 of the Act for an order of possession to be issued, I find that the Two Month Notice is unenforceable, and I therefore decline to grant the Landlord an order of possession.

### Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice is dismissed without leave to reapply. However, I decline to grant the Landlord an order of possession as I deem the Two Month Notice unenforceable as it fails to comply with section 52 of the Act.

As I have made no finding of fact on the validity of the grounds upon which the Two Month Notice was served, the Landlord remains entitled to serve a new properly completed Two Month Notice for the same purpose, should they wish to do so.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 3, 2023

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Residential Tenancy Branch