



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPL, MNRL, MNDL, FFL, CNL-MT, FFT

### Introduction

This hearing dealt with the cross applications pursuant to the *Residential Tenancy Act* (the *Act*)

The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent or utilities pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

the tenant applied for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlords Use of Property (the 2 Month Notice) pursuant to section 49;
- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlords Use of Property (the 2 Month Notice) pursuant to section 66; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. Both parties submitted documentary evidence for this hearing which was exchanged.

### Preliminary Issue – Sever Monetary Claim

The following RTB *Rules* are applicable and state (my emphasis added):

#### *2.3 Related issues*

*Claims made in the application must be related to each other. **Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.***

*6.2 What will be considered at a dispute resolution hearing*

*The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

I informed both parties that Rule 2.3 of the RTB *Rules* allows me to sever issues that are not related to the party's main urgent application. The primary reason to file this application was to dispute a notice to end tenancy for the tenant, and an order of possession for the landlord.

I informed the party's that they were provided with a priority hearing date, due to the urgent nature of his application. I informed them that this was the central and most important, urgent issue to be dealt with at this hearing.

I notified the landlord that his monetary claim was dismissed with leave to reapply. I informed him that he received a priority hearing date for the end of tenancy issue, as his monetary claim was a non-urgent lower priority issue, and it could be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. The landlord confirmed his understanding of same.

#### Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlords Use of Property be cancelled? If not, is the landlord entitled to an order of possession?

Should the tenant be granted more time to file an application to dispute the notice to end tenancy?

Is either party entitled to the recovery of the filing fee?

### Background and Evidence

The parties agree that this tenancy began on May 3, 2020 and that the current monthly rent of \$1200.00 is due on the first day of each month. The tenant is responsible for 25% of the utilities. AZ testified that a Two Month Notice to End Tenancy for Landlords Use of Property was served on March 18, 2023. AZ testified that his parents want to move into the entire home and need the home vacant for their comfort and security. AZ testified that he purchased the home from DS and took possession on June 1, 2021. AZ testified that DS rented the unit back from him until June 1, 2023. AZ testified that DS had his permission to rent the basement out but now the tenant refuses to leave despite being served notice. DZ requests an order of possession.

HZ testified that he does not believe the AZ's parents are moving in. HZ testified that the landlord offered another lease term but at a higher rent that he could not afford. HZ testified that the landlord then told him that they need to do renovations in the unit, and he had to move. HZ testified that the landlords story keeps changing and that he doesn't believe that the landlord's family is moving in and that they just want to get rid of him.

### Analysis

Firstly, I address the tenants request for more time to file an application to dispute the notice. The tenant confirmed that they received the Notice on March 18, 2023 and didn't file an application to dispute the notice until June 6, 2023. The tenant testified that the landlord made several offers to remain in the home which delayed him from filing as he thought the tenancy was going to continue but, only when an offer with a rent increase above the regulations was made the tenant decided to file an application. The tenant was able to file their application and provide evidence for this hearing and did not provide any submission to state that he couldn't. The tenant has not satisfied me that further time is required. The corrected effective date of the notice is May 31, 2023. I must and have turned my mind to section 66 of the Act and it reads as follows:

#### **Director's orders: changing time limits**

**66** (1)The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*. (2)Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) *[landlord's notice: non-payment of*

rent] for a tenant to pay overdue rent only in one of the following circumstances:

- (a) the extension is agreed to by the landlord;
- (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

**(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.**

I find that an extension is not appropriate and that the tenant filed their application late. *However*, even though the tenant filed their application late, when a landlord issues a notice to end tenancy, they bear the burden to provide sufficient evidence to support the issuance of the notice. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on March 18, 2023 for the following reason:

*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.*

The landlord testified that the Contract of Purchase and Sale supports his position. However, the contract makes no specific mention that a Two Month Notice to End Tenancy for Landlords Use of Property under section 49 of the Residential Tenancy Act is to be issued. In addition, that contract is dated February 22, 2021 and the landlord rented the unit to the seller, there is no clear and defined request to end any tenancy in that contract.

I find the reason checked off on the Notice is incorrect and does not apply to the situation before me therefore, I find the landlord has not provided sufficient evidence to support the issuance of the notice, and accordingly, I hereby cancel the notice, it is of no effect or force. The tenancy continues. The landlords request for an order of possession and the recovery of the filing fee is dismissed without leave to reapply.

The tenant is entitled to the recovery of the filing fee. The tenant is entitled to a one time rent reduction of \$100.00 from the next rent due.

Conclusion

The Two Month Notice to End Tenancy for Landlords Use of Property dated March 18, 2023 is cancelled, the tenancy continues.

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: October 10, 2023

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Residential Tenancy Branch