



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL, DRI, CNL, DRI**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the Act) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- Cancellation of a Notice of Rent Increase pursuant to section 43;

This hearing also dealt with another application by the tenant under the *Residential Tenancy Act* (the Act) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- Cancellation of a Notice of Rent Increase pursuant to section 43;

### **Service of Notice of Dispute Resolution Proceeding and Evidence (Proceeding Package)**

Each party acknowledged service of the other's documents with the exception of a document submitted by the landlord on October 17, 2023, to the RTB, six days before the hearing.

The landlord testified they sent the letter by registered mail to the tenant on October 17, 2023, thereby effecting service under section 90 five days later, October 22, 2023. The tenant testified they received the registered mail the day before the hearing.

The tenant objected to the admission of the document as evidence because of the late service which effected their ability to respond in a thoughtful and timely manner before the hearing.

After hearing both parties, I find this document was not served upon the tenant in compliance with the time provisions of the Act. Therefore, I will not consider it in my Decision.

### **Issues to be Decided**

Should the landlord's Two Month Notices and Notices of Rent Increase be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

The parties submitted conflicting information and testimony. The parties disagreed on key issues.

#### *Application*

This is an application by the tenant to cancel Two Month Notices issued by the landlord. The tenant asserted the Notices are not issued in good faith and are issued in response to the landlord's failure to sell the unit. The landlord does not intend to move into the unit.

The landlord denied the claim and requested an Order of Possession effective as soon as possible.

The tenant also requested the landlord's Notices of Rent Increase be cancelled. The landlord denied issuing any such a notice.

#### *Burden of Proof*

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice.

*Residential Tenancy Branch Rules of Procedure - Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy, the landlord must present their evidence first.

Consequently, even though the tenant applied for dispute resolution and is an Applicant, the landlord presented their evidence first.

#### *Tenancy*

The parties agreed to the background of the tenancy. The tenancy began on April 11, 2022. Monthly rent is \$2,200.00, due on first day of the month, with a security deposit in the amount of \$1,100.00.

The parties agreed the tenant is paying more rent than the previous occupant to which the tenant objects.

The parties agreed the landlord has never issued a Notice of Rent Increase.

#### *Two Month Notice*

The parties agreed the landlord issued three Two Month Notices from January 30, 2023 to now. All state the landlord, and their children intend to move in:

1. A Two Month Notice dated January 30, 2023, dismissed after hearing by Decision dated May 23, 2023, the file number referenced on the first page.
2. A Two Month Notice dated June 23, 2023, the subject of the primary file. The tenant acknowledged service and submitted a dispute within the time allowed.
3. A Two Month Notice dated February 26, 2023 and served July 28, 2023. This Notice is the subject of the secondary file. The tenant acknowledged service and submitted a dispute within the time allowed.

A copy of each Notice was submitted which are in the standard RTB form.

The landlord agreed the tenant applied to dispute each Notice within the allowed time.

### *Landlord's Testimony*

The landlord testified as follows.

The landlord listed the unit for sale ten days after the start of the tenancy on April 11, 2022. The landlord cancelled the listing six months later in January 2023. Since then, the landlord has issued three Two Month Notices.

The landlord testified that they originally planned on selling the subject rental property but now the family, two adults and two children, want to move into it.

The landlord testified that they currently rent a basement suite. The suite is damp and provides poor living conditions. These negative conditions affect her children's health. One child has asthma as a result.

No documentary evidence to support the above testimony was entered into evidence.

### *Tenant's Testimony*

The tenant testified they are disturbed and inconvenienced by the multiple issuances of Two Month Notices.

They believe the landlord choose not to move into the unit when they bought it and instead planned to sell it. When these plans failed to materialize, the landlord decided to move in. They have not issued any of the Two Month Notices in good faith.

### *Summary*

The tenant requested the Notices be cancelled as the landlord did not issue it in "good faith".

The landlord requested an Order of Possession.

### **Analysis**

While I have turned my mind to the documentary evidence and the testimony, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

### *The Act and Guidelines - Burden of Proof*

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

To evict a tenant for landlord's use of the property, the landlord has the burden of proving the reasons on the Notice. The parties had contrasting narratives which were provided in detail in the hearing.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Both parties agree that the landlord had previously listed the property for sale. The tenant stated the failure to sell the unit is the reason for the Two Month Notice. The tenant alleged that the landlord is not acting in good faith.

According to *Residential Tenancy Policy Guideline #2A*, when the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith. I find that the landlord's testimony is not enough to meet this onus. I find they have not met the burden of proof for the reasons for the issuance of the Notices.

*The Residential Tenancy Branch Policy Guideline # 2* states *good faith* is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Two Month Notice.

This Guideline says that the landlord must show they have no other motive. Otherwise, the question is whether the landlord had a dishonest purpose.

The Guideline directs me to consider motive in deciding whether to uphold the Notice. When the landlord's good faith is called into question, the landlord must show they truly intend to do what they said on the Notice. The landlord must also establish that they do not have another purpose that negates the honesty of intent. They must not have an ulterior motive for ending the tenancy.

### *Findings*

The tenant has raised the good faith intention of the landlord which I find has some basis.

The timeline of events leads me to conclude that the landlord had an opportunity to move into the unit in April 2022 when they rented the unit to the tenants. They did not do so. Instead, they listed the unit for sale.

After six months when the unit did not sell, the landlord ended the listing. Since then, they have issued three Notices claiming they are moving in because their current apartment has a negative effect on their child's health.

I find that the timing of the Two Month Notices after the unit was removed from a sale listing, raises doubts about the bona fide intentions of the landlord. I find there are reasonable doubts about the intention of the landlord to occupy the unit.

While the landlord provided some explanation about the reason for issuing the Notice, I find that I am not wholly convinced that there are no other factors which have given rise to the Notice.

In any event, while the landlord may indeed intend to use the rental unit for the purposes stated on the Notice, I find there may be additional reasons fueling the issuance of the Notice. I find the landlord has not met the burden of proof that they do not have an ulterior motive in issuing the Notice. Therefore, I find that the argument has merit that there is lack of good faith in the issuance of the Notice.

I find the landlord has not met the burden of proof that they intend to do what they said in the Notices.

Consequently, I cancel the Two Month Notices.

This tenancy will continue until it is ended in accordance with the agreement and the Act.

#### *Tenant's Application to Cancel Notices of Rent Increase*

I find the landlord did not issue a Notice of Rent Increase.

Accordingly, I dismiss the tenant's applications without leave to reapply.

*Conclusion*

The Two Month Notices are cancelled and of no force or effect.

The applications to dispute Notices of Rent Increase are 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: October 24, 2023

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Residential Tenancy Branch