



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for other reasons.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Were the Tenants served a 2 Month Notice to End Tenancy?
2. If so, did the Landlord use the property for the purpose stated in the 2 Month Notice?

### Background and Evidence

At the outset of the hearing the Landlord clarified the respondent's names and indicated the Landlord should be listed as the owner of the property. She confirmed she worked for the property management company who managed the tenancy on behalf of the owner.

The parties agreed they entered into a fixed term tenancy agreement that began on August 15, 2006 which switched to a month to month tenancy after August 31, 2007. From September 1, 2010 to the end of the tenancy rent was payable on the first of each month in the amount of \$3,190.00. The Tenants vacated the property by July 21, 2011 based on the 2 Month Notice that was personally served to the female Tenant on May 4, 2011. The Tenants' security deposit of \$1,750.00 was disbursed at the end of the tenancy.

The Tenants are seeking compensation equal to two times the monthly rent of \$6,380.00 (2 x \$3,190.00) because the Landlord ended their tenancy because he had sold the property when in fact he did not sell the property and has since entered into a long term tenancy agreement with new tenants.

The Landlord confirmed she issued the 2 Month Notice and acknowledged she issued it for the reason *"All of the conditions for 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"* even though she knew the house had not sold. She argued that she had issued it in error and once she realized her error she spoke with the Tenants who verbally agreed to have the Notice cancelled and she wanted them to sign a mutual agreement to end the tenancy.

The Landlord referenced a copy of an e-mail provided in her evidence which she believes is the Tenant's acknowledgment that they agreed to cancel the Notice because they requested a second notice be issued once the house had sold. She then stated that she did not get the agreement to cancel the Notice in writing and that the Tenants were provided with one month's free rent for July 2011 as they were moving out of the unit.

The Tenants stated that they trusted the Landlord's intent of selling the home and felt they had to move based on the Notice. They would have preferred to stay and not have to move. The Tenants denied that they ever agreed to rescind or cancel the Notice; rather they questioned it and refused the idea of signing a mutual agreement to end the tenancy as this would indicate they were in agreement to end the tenancy, which they were not.

### Analysis

Pursuant to section 64 (3)(c) of the Act which stipulates the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended, I have corrected the style of cause of this application to include the name of the Owner who is listed as the Landlord c/o of the property management company on the tenancy agreement.

The evidence proves the Tenants were issued a 2 Month Notice to End the Tenancy. The Tenants deny that they agreed to have the Notice cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the

burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove the Tenants agreed to cancel the 2 Month Notice to End Tenancy. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet her burden of proof.

The Landlord then argued the Tenants verbally agreed to cancel the Notice and then requested another one be issued as supported in her evidence which included a copy of an e-mail exchange between the parties.

The *Residential Tenancy Policy Guideline # 11* provides that a landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. Furthermore, *Guideline # 11* states that the giving of a second Notice to End Tenancy does not operate as a waiver or cancellation of a Notice already given.

As per the aforementioned I accept that the 2 Month Notice was issued May 4, 2011 for the reason: *"All of the conditions for 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"* and the Tenants vacated the property on or before July 21, 2011 in response to this Notice.

In this case the evidence proves the Landlord did not sell the property and as of December 2011 he entered into a fixed term tenancy agreement with new tenants.

Section 51(2) of the Act provides that in addition to the amount payable under subsection (1), if (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

As per the aforementioned, I find the Tenants have met the burden of proof to establish their claim and I award them **\$6,380.00** (2 x \$3,190.00) pursuant to section 67 of the Act.

Conclusion

The Tenants' decision will be accompanied by a Monetary Order in the amount of **\$6,380.00**. This Order is legally binding and must be served upon the Landlords.

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: March 09, 2012.

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Residential Tenancy Branch