



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNL, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for more time to file an application to cancel a Notice to End Tenancy; to have the Two Month Notice to End Tenancy set aside; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on January 07, 2014. Canada Post tracking numbers were provided by the tenants in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

One of the tenants appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

- Are the tenants entitled to more time to file their application to have the Notice to End Tenancy set aside?
- Are the tenants entitled to have the Notice to End Tenancy set aside?

### Background and Evidence

The tenant attending testifies that this tenancy started on June 01, 2013 for a fixed term of one year ending on June 01, 2014. The tenant testifies that the landlord served the tenants with a Two Month Notice to End Tenancy for landlord's use of the property on December 08, 2013 by placing the Notice at the tenant's door. The tenant testifies that this Notice has an effective date of February 28, 2014 and informs the tenants that the landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse will occupy the rental unit.

The tenant testifies that as this is a fixed term tenancy the landlord is not entitled to end the tenancy until the fixed term expires. The tenants therefore seek to have the Two Month Notice cancelled.

The tenants also request to recover the \$50.00 filing fee from the landlord.

### Analysis

I refer the parties to s. 49(2) of the *Residential Tenancy Act*(Act) which states:

A landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

In the tenants undisputed testimony the tenant has testified that this is a fixed term tenancy which is not due to end until June 01, 2013. Therefore in accordance with s. 49(2)(c) of the *Act* the landlord is not entitled to end the tenancy any sooner than this date. The landlord did not appear at the hearing to provide any documentary evidence or testimony concerning this matter. Consequently, the Two Month Notice has no effect and is set aside.

### Conclusion

The tenant's application is allowed. The Two Month Notice to End Tenancy for Landlords use of the Property dated December 08, 2013 is cancelled and the tenancy will continue.

As the tenants have been successful in setting aside the Notice, the tenants are entitled to recover the **\$50.00** filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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: February 20, 2014

---

Residential Tenancy Branch

