



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Code: CNL, OLC

### Introduction & Background

This hearing was convened by way of conference call in response to a Tenants' Application for Dispute Resolution (the "Application") to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") and for the Landlord to comply with the *Residential Tenancy Act* (the "Act").

Both Tenants and the Landlord appeared for hearing and the Landlord confirmed receipt of the Tenants' Application. The Tenants provided a copy of the written tenancy agreement and a copy of the notice to end tenancy in written evidence.

The hearing process was explained and the parties were provided with a full opportunity to present their evidence, make submissions to me, and to cross examine each other on the evidence presented.

### Issue(s) to be Decided

- Are the Tenants entitled to cancel the Notice dated December 23, 2014 because the Landlord has issued it contrary to the Act?

### Background and Evidence

This tenancy started in 2010. On June 28, 2014 the parties renewed the tenancy by signing a new tenancy agreement which started on August 1, 2014. Rent under this agreement is payable by the Tenants in the amount of \$2,290 on the first day of each month.

The residential tenancy agreement shows that the tenancy is for a fixed term period of one year and is to expire on July 31, 2015. After this date, the tenancy is to end and the Tenants are required to vacate the rental unit; both parties initialed this section of the

tenancy agreement to verify the ending of the tenancy and the requirement for the Tenant to vacate the rental suite. The parties confirmed these details on the tenancy agreement.

The Landlord confirmed that she had served the Tenants with the Notice on December 23, 2014 by attaching it to their door. The Notice shows that the reason for ending the tenancy is because the Landlord, who is the owner, wants to occupy the rental suite. The effective vacancy date of the Notice is February 20, 2015.

The Tenant confirmed receipt of the Notice on December 23, 2014 and disputed the Notice by making an Application on December 23, 2014 based on the fact that they have a fixed term tenancy which the Landlord is obligated to honor.

The Landlord explained that her son had been accepted into university and she had lost possession of the home she was residing in and now wanted occupancy of her own home, the rental suite, in order to pay for her son's university expenses.

When the provisions of the Act pertaining to the issuing of the Notice during a fixed term tenancy were explained to the Landlord during the hearing, the Landlord became angry and agitated. The Landlord then submitted that Landlords have no rights and that she had a right to take possession of her own home and that she was currently homeless and had nowhere else to go.

The Landlord continued to make allegations that the Tenants had damaged her rental suite and were impeding viewings for the sale of the property. I then attempted to explain to the Landlord that this issue was not the subject for this hearing, that it was not related to the Notice being decided upon in this hearing, and that the Landlord should explore other remedies available to her under the Act to deal with these issues.

### Analysis

Firstly, I find that the Tenant made the Application to dispute the Notice within the 15 day time limit stipulated by Section 49(8) of the Act after being served with the Notice on December 23, 2014.

Secondly, Section 49(2) (c) provides that if a Landlord intends to end the tenancy for owner occupancy during a **fixed term period** then a Notice cannot end the tenancy **earlier** than the date specified as the end of the tenancy. Such a Notice may only be effective during a **periodic** (month to month) tenancy.

Before any party signs a tenancy agreement, they are required and obligated to understand that during a fixed term tenancy neither the Landlord nor the Tenant may end the tenancy except with a notice for cause or by agreement of both parties in writing.

Therefore, based on the above provisions of the Act, I find that the Landlord cannot end the Tenant's tenancy with this Notice at any time before the fixed term tenancy has ended, namely on July 31, 2015. Therefore the Notice must fail and the Landlord must comply with the Act in respect to issuing and enforcing such a Notice.

### Conclusion

The Tenant's Application is granted. For the above reasons, as the Notice dated December 23, 2014 has been served to the Tenants contrary to the Act, I find that Tenants are entitled to have it canceled.

The Notice dated December 23, 2014 is hereby cancelled and the tenancy will continue until it is ended in accordance with the Act.

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: January 21, 2015

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Residential Tenancy Branch

