



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel the Two Month Notice to End Tenancy for Landlord's Use of the Property 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 June 15, 2015. Canada Post tracking numbers were provided by the tenants in verbal testimony. 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*.

The tenants and an advocate for the tenants appeared, gave sworn testimony, were 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*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

Are the tenants entitled to an Order to cancel the Two Month Notice to End Tenancy?

### Background and Evidence

The tenants testified that this tenancy started on October 15, 2014 for a fixed term tenancy with a minimum one year lease. A copy of the tenancy agreement has been provided in documentary evidence. Rent for this unit is \$1,200.00 per month due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$600.00 on October 05, 2015.

The tenants testified that the landlord served them with a Two Month Notice to End Tenancy (the Notice) on May 29, 2015 in person. The Notice has an effective date of July 31, 2015. The Notice indicated that the landlord, the landlords spouse or a close family member of the landlord or the landlord's spouse intends to occupy the rental unit.

The tenants testified that as this is a fixed term tenancy the landlord is not entitled to end the tenancy by serving a Two Month Notice until the lease expires on October 15, 2015. The tenants seek to have the Notice cancelled and seek to recover their filing fee of \$50.00.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the tenants. I refer the parties to s. 49(2)(c) of the *Residential Tenancy Act (Act)* which says that if the tenancy agreement is a fixed term tenancy agreement the landlord may end the tenancy not earlier than the date specified as the end of the tenancy. As the tenancy started on October 15, 2014 and the tenancy agreement specifies that it is a minimum one year lease then the earliest the landlord may end the tenancy is October 15, 2015. I therefore uphold the tenants' application to cancel the Notice.

### Conclusion

The tenants' application is allowed. The Two Month Notice to End Tenancy for Landlords Use of the Property dated May 28, 2015 is cancelled and the tenancy will continue.

As the tenants have been successful in setting aside the Notice, The tenants are entitled to recover their **\$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: August 10, 2015

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Residential Tenancy Branch

