



# 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 as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice") and for recovery of the filing fee paid for this application.

The tenant attended the telephone conference call hearing; however, despite being served with the tenant's application, the landlords did not attend and the hearing proceeded in the landlords' absence.

The tenant was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to a cancellation of the Notice?

### Background and Evidence

The written tenancy agreement submitted by the tenant shows a tenancy between this tenant and the listed landlord/respondent, "JB", for a tenancy beginning November 1, 2012, and monthly rent of \$800.00. JB lives in the upper portion of the residential property and the tenant rents the lower portion of the residential property.

The tenant submitted that she received the Notice on July 31, 2015, and the application shows that the tenant disputed the Notice within 15 days.

The tenant submitted, both at the hearing and in her documentary evidence, that the listed respondent, "JJ", issued the Notice to her and that JJ was not her landlord. The tenant submitted that JJ and JB are spouses, but are separated. The tenant's further evidence was a written, signed statement from JB confirming that he was the landlord for this tenancy, that the tenant was a model tenant, and that he had been separated from JJ since 2011. JB stated further on the document that JJ had no standing to issue the Notice to the tenant.

At the hearing, the tenant submitted that the landlord, JB, informed her that he was now the sole owner of the residential property, including the rental unit.

### Analysis

In the case before me, the tenant was issued a Notice to end the tenancy pursuant to section 49 of the Act, which lists certain reasons a landlord may seek to end a tenancy in two months.

In the case before me, I find the tenant filed her application in dispute of the Notice within the required time frame allowed under section 49 of the Act. When a Notice comes under dispute by the tenant, section 11.1 of the Rules requires the landlord to proceed first in a hearing and present their case.

Further, I find that the issuer of the Notice, JJ, had no standing as a landlord and therefore had no authority to issue the Notice.

As the landlords/respondents failed to attend the hearing to present evidence on the merits of the Notice and as the issuer of the Notice had no standing, I order that the Notice dated July 31, 2015, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

I have not awarded the tenant recovery of her filing fee, although I find that she is entitled to it, as the tenant stated in the hearing that her landlord had no part of the Notice being issued and did not want him to suffer a financial loss due to the actions of JJ.

### Conclusion

The tenant's application seeking cancellation of the Notice is granted as I have cancelled the respondent's JJ's Notice, dated July 31, 2015.

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 29, 2015

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Residential Tenancy Branch

