



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, OPL

### Introduction

This was a hearing with respect to applications by the tenants and by the landlords. The tenants applied to cancel a two month Notice to End Tenancy for landlord's use. The landlords applied for an order for possession pursuant to the two month Notice to End Tenancy. The hearing was conducted by conference call. The named landlord and her daughter, acting as a representative, called in and participated in the hearing. The tenants did not attend the hearing although this was the hearing of their own application and they were served with the landlords' application and Notice of Hearing.

### Issue(s) to be Decided

Should the Notice to End Tenancy dated November 11, 2015 be cancelled?  
Is the landlord entitled to an order for possession pursuant to the Notice to End Tenancy?

### Background and Evidence

The rental unit is a ground floor suite in the landlord's house in North Vancouver. The tenant J.C. moved into the rental unit in 2014. In December, 2014 the tenant J.M. also moved into the rental unit. The landlord and the tenants signed a tenancy agreement on July 1, 2015. The agreement was for a fixed term tenancy of 12 months with rent in the amount of \$800.00, payable on the first of each month.

On November 11, 2015 the landlords served the tenants with a two month Notice to End Tenancy for landlord's use. According to the landlords the elderly male landlord suffers from poor health and has medical conditions that make it difficult to climb stairs. The landlords therefore want to occupy the ground floor of the rental unit so the landlord will not have to climb stairs.

On November 25, 2015 the tenants applied to cancel the Notice to End Tenancy on the ground that their tenancy agreement is for a fixed term ending June 30, 2016 and section 49 (4) (c) of the *Residential Tenancy Act* provides that a landlord may not end a fixed term tenancy for landlord's use before the date specified as the end of the tenancy.

The landlord has submitted evidence to support a finding that there are grounds that would justify ending the tenancy for cause due to the tenants' loud and disruptive behaviour. The landlord has not served the tenants with a one month Notice to End Tenancy for cause.

The tenants have not paid rent for January. The landlords are not sure whether the tenants are planning to move out of the rental unit at the end of January.

### Analysis

Although the tenants have not attended the hearing to provide evidence in support of their application to cancel the two month Notice to End Tenancy, the landlord has provided evidence including a copy of the tenancy agreement, which is for a fixed term ending June 30, 2016. I therefore find that the two month Notice to End Tenancy is void and unenforceable. The landlords' application is therefore dismissed without leave to reapply.

If the tenancy continues and the landlord believes that there are grounds that would justify ending the tenancy for cause, the landlords are at liberty to serve the tenants with a one month Notice to End Tenancy for cause.

### Conclusion

The tenants did not attend the hearing and their application is therefore dismissed, however, because the tenancy is for a fixed term, the Notice to End Tenancy for landlord's use is void and unenforceable. The landlords' application for an order for possession has also been dismissed.

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 20, 2016

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Residential Tenancy Branch

