



# 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 scheduled to address the tenant's application pursuant to the Residential Tenancy Act ("the Act") for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") pursuant to section 49; and recovery of the filing fee for this application.

The landlord did not attend this hearing, although I waited until 9:50a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant/applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The tenant testified that she received a 2 Month Notice to End Tenancy posted on her door June 20, 2016. She testified that she served the landlord with her Application for Dispute Resolution ("ADR") on July 5, 2016 by registered mail. She provided a Canada Post tracking number for both the mailing of the ADR as well as the mailing of her evidence package sent to the landlord on July 27, 2016. She testified that the tracking information indicated that the ADR was not picked up by the landlord but that the evidence package was picked up and signed for by the landlord. Based on the evidence provided by the tenant at this hearing, I find that the landlord was sufficiently served with the tenant's ADR and the tenant's evidence package.

### Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

This tenancy began in August 1, 2000. The tenant has resided in the same rental unit since 2002. The tenant did not submit a written tenancy agreement as evidence. The tenant testified that she has paid her monthly rent up to and including July 2016 but has not paid rent for the month of August 2016. The tenant testified that on June 20, 2016, the tenant received a 2 Month Notice on her rental unit door identifying the following reasons for seeking an end to this tenancy:

*All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The tenant submitted documentary materials as evidence for this hearing including email correspondence with the landlord's agent (real estate agent). On June 17, 2016, the tenant sent email correspondence to the landlord's agent asking the "status of the rental unit" as the tenant was aware that the unit had been listed for sale for a period of time prior to this date. The landlord's agent responded that the unit had sold and that he will provide a 2 Month Notice as soon as practicable as the purchaser will be renovating and "using" the new unit. On July 1, 2016, in response to a further message from the tenant regarding remaining in the rental unit and the possibility of filing a claim with the residential tenancy branch, the landlord's agent wrote,

*This property has been sold but the partners are working through some issues. It currently is not available. It may come on the market but with new owners. Their intentions are unknown...*

In a later email, the landlord's agent indicates that the "new owner will be occupying this unit and has requested vacant possession."

In her testimony and written submissions for this hearing, the tenant stated that she has removed her possessions from the unit on a temporary basis and in case she is unsuccessful in her application. However, the tenant indicated that she wants to continue to reside in the rental unit and proceed with her application to cancel the Notice to End Tenancy.

The tenant argues that she does not believe the conditions of sale have been satisfied and that there is no evidence from the landlord that the new owner intends to reside in the rental unit. Finally, she testified that the landlord agreed to present her with an opportunity to purchase the rental unit in September 30, 2016.

### Analysis

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify the notice issued. The tenant entered into written evidence a copy of the 2 Month Notice to End Tenancy for Landlord's Use. In that Notice, requiring the tenant to end this tenancy by August 31, 2016, the landlord relies on section 49(5) in providing the grounds for this notice,

49 (5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Based on the evidence provided by the tenant, I find the landlord was deemed served with the tenant's Application and her evidence for this application. The landlord did not attend this application to justify the 2 Month Notice. Rule 10.1 of the Rules of Procedure provides as follows:

*The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.*

In the absence of the landlord's participation in this hearing, the hearing proceeded and the tenant presented sworn undisputed testimony in support of her application for dispute resolution and specifically to cancel the 2 Month Notice to End Tenancy. The tenant provided testimony and argument that she does not accept the 2 Month Notice and applies to have the tenancy continue. However, she notes that, at this time, she has not paid rent for August 2016 as a preventative measure in the event that she is required to vacate the residence permanently.

The tenant argues that she does not believe the conditions of sale have been satisfied and that there is no evidence from the landlord that the new owner intends to reside in the rental unit. She testified, referring to her evidentiary material, that while the box on the 2 Month Notice was ticked off to indicate that the purchaser intends to occupy the rental unit, she has been provided with no evidence to support this claim beyond an email statement from the landlord's real estate agent confirming this claim. The tenant argues that the landlord's notice does not meet the requirements of section – below as the Notice to End Tenancy has not been issued in good faith. Residential Tenancy Policy Guideline No. 2 addresses the good faith requirement of the landlord in ending a tenancy.

A claim of good faith is inherent when a landlord issues a 2 Month Notice to End Tenancy that indicates a purchaser or their family will reside in the rental unit after the sale of the rental unit/residential property. It requires an honest intention to use the rental unit for the purposes stated in the Notice to End Tenancy with no ulterior motive to defraud or seek an advantage.

The landlord might demonstrate their good faith by providing, for example, an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy.

I accept the tenant's sworn, undisputed testimony that she has not received formal documentation of the sale of the rental unit or of the new owner's request that the rental unit be vacant.

*I note that the tenant advised during the hearing that she was vacating the rental unit but that she was only doing so on a 'temporary' basis and that she had no intention of permanently vacating the residence. She provided sworn testimony that the landlord knew of her intention to remain in the rental unit and to dispute the 2 Month Notice.*

Therefore, based on the tenant's sworn testimony that she has not received formal documentation (including but not limited to a redacted agreement for sale) or the equivocal indication that the purchaser intends to reside in the rental unit, I find that the 2 Month Notice should be cancelled.

#### Conclusion

I cancel the 2 Month Notice to End Tenancy for Landlord's Use. The tenant will continue.

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 19, 2016

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Residential Tenancy Branch