



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated June 28, 2016 ("1 Month Notice"), pursuant to section 47; and
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated June 28, 2016 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and his articling student agent, SD (collectively "landlord") and the two tenants and their agent, JP (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties confirmed that their agents had authority to speak on their behalf at this hearing. This hearing lasted approximately 58 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's written evidence package.

As advised to both parties during the hearing, I did not consider the tenants' written evidence at the hearing or in my decision. The tenants stated that they did not serve it on the landlord and the landlord stated that he did not receive it. The tenants are required by Rule 3.1 of the Residential Tenancy Branch *Rules of Procedure* to serve any evidence that they intend to rely upon at the hearing to the landlord.

The tenants confirmed receipt of the landlord's 2 Month Notice on June 29, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on June 29, 2016.

The landlord stated that he did not wish to pursue his application for an order of possession for cause at this hearing and that his 1 Month Notice was cancelled. Accordingly, the landlord's 1 Month Notice, dated June 28, 2016, is cancelled and of no force or effect.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for landlord's use of property?

Are the tenants entitled to recover the filing fee for their application?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the parties and their agents, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed that this tenancy began on January 1, 2016 for a fixed term ending on June 30, 2016, after which it transitioned to a month-to-month tenancy. Monthly rent in the amount of \$2,100.00 is payable on the first day of each month. A security deposit of \$1,050.00 was paid by the tenant and the landlord continues to retain this deposit. The tenants continue to reside in the rental unit, which is a house. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The tenants seek to cancel the landlord's 2 Month Notice and to recover the \$100.00 filing fee paid for their application.

The landlord's 2 Month Notice, which states an effective move-out date of August 31, 2016, indicates the following reason for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

The landlord stated that his son and fiancé intend to occupy the rental unit in good faith after the tenants vacate by August 31, 2016. The fiancé is the landlord's agent that

appeared at this hearing. The landlord said that he promised the rental unit to the couple in order to assist them financially. The landlord provided a wedding card indicating that his son's wedding is on August 27, 2016. The landlord also provided a written tenancy agreement between his son and his son's current landlord, indicating that his son is in a fixed term tenancy from January 1, 2016 to August 31, 2016, after which the son is required to vacate the rental unit. The landlord said that his son has nowhere to live if the tenants do not vacate the rental unit. The landlord said that the tenants only disputed the notice to delay the move-out process and because the tenants and their mother claim to be sick and unable to move, but no details were provided to the landlord regarding these sicknesses.

The tenants dispute the landlord's 2 Month Notice, stating that the landlord did not issue it in good faith. The tenants said that the landlord issued them a 1 Month Notice to end their tenancy as well as tried to increase their rent, all around the same time as the 2 Month Notice was issued.

### Analysis

Subsection 49(3) of the Act states that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

According to subsection 49(8) of the Act, tenants may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenants receive the notice. The tenants received the 2 Month Notice on June 29, 2016, and filed their application to dispute it on July 6, 2016. Therefore, the tenants' application is within the 15 day time limit under the Act. Therefore, the onus shifts to the landlord to justify the basis of the 2 Month Notice.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*A claim of good faith requires honesty of intention with no ulterior motive...*

...

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.*

I find that the landlord had a number of ulterior motives for issuing the 2 Month Notice and it was not issued in good faith.

Firstly, the landlord issued another notice to end tenancy (the 1 Month Notice) to the tenants on June 28, 2016, the day before issuing the 2 Month Notice on June 29, 2016. The landlord issued the 1 Month Notice to the tenants for allowing “an unreasonable number of occupants in the unit...” The tenants applied to dispute the notice on July 6, 2016 and it was only at this hearing on August 18, 2016, that the landlord withdrew the notice, not prior to this hearing. The landlord stated that his son attended at the rental unit on a few different occasions and saw new tenants at the property, believing that there were an unreasonable number of occupants at the rental unit.

Secondly, the landlord attempted to increase the tenants’ rent around mid-June 2016, approximately two weeks before the 2 Month Notice was issued. Both parties agreed that there were discussions between them regarding this proposed increase in rent. The landlord testified that he did not know the rules regarding waiting one year before increasing the tenants’ rent but that the rent was ultimately not increased.

Thirdly, the written tenancy agreement signed by both parties indicates that after the fixed term period, the tenancy can continue on another fixed term or on a month-to-month basis. There is no requirement that the tenants vacate the rental unit at the end of the fixed term. When questioned by the tenants, the landlord stated that his son’s wedding had been planned for some time and at the time of the tenancy agreement signing on December 18, 2015, the landlord knew that his son would be getting married. The landlord’s affidavit indicates that the landlord “promised” his son and “would-be daughter-in-law” the rental unit in order for them to “start their future together.” The tenants said that at the time of the tenancy agreement signing, they were not advised by the landlord about his son’s wedding or his intention to move into the rental unit after the wedding. Yet, the tenancy agreement of the landlord’s son, which indicates a fixed term from January 1, 2016 to August 31, 2016, after which the son is required to vacate the unit, was signed on January 1, 2016, after the tenants signed their tenancy agreement with the landlord, weeks before. If the landlord was aware of this longstanding intention to assist his son by providing a home for him after the wedding, which had been planned for some time, the landlord presumably would have included a vacate clause in

his tenancy agreement with the tenants, requiring them to move out by the latest on August 31, 2016.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met his burden of proof to show that the landlord's son and fiancé intend to occupy the rental unit in good faith.

Accordingly, I allow the tenants' application to cancel the landlords' 2 Month Notice. The 2 Month Notice, dated June 28, 2016, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for the landlord's use of property. This tenancy continues until it is ended in accordance with the *Act*.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated June 28, 2016 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlord's 1 Month Notice, dated June 28, 2016, is cancelled and of no force or effect.

I order the tenants to deduct \$100.00 from a future rent payment at the rental unit, in full satisfaction of the monetary award for the filing fee.

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 29, 2016

---

Residential Tenancy Branch