



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

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### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on November 22, 2016 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order allowing the Tenants more time to make an application to cancel a notice to end tenancy;
- an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 1, 2016 (the "2 Month Notice");
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant H.K.S. attended the hearing on behalf of both Tenants, and was capably assisted by M.P., an advocate who provided translation services when necessary. The Landlords were represented at the hearing by the Landlord S.M. All parties giving evidence provided a solemn affirmation.

The Tenant H.K.S. testified that the Tenants' Application package was served on the Landlords by registered mail on November 22, 2016. A Canada Post registered mail receipt was provided in support. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenants' Application package is deemed to have been received by the Landlords on November 27, 2016. The Landlord S.M. acknowledged receipt of the Tenants' Application package.

The Landlord S.M. confirmed the Landlords did not submit any documentary evidence. No further issues were raised with respect to service or receipt of the above documents.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

### Issues to be Decided

1. Are the Tenants entitled to an order allowing them more time to make an application to cancel the 2 Month Notice?
2. Are the Tenants entitled to an order cancelling the 2 Month Notice?
3. Are the Tenants entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Tenants provided with their documentary evidence a copy of the tenancy agreement between the parties. It confirms a fixed-term tenancy for the period from June 1, 2016 to May 31, 2018. Rent in the amount of \$800.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$400.00. The Landlord acknowledged these were terms of the tenancy agreement between the parties.

The Landlords issued the 2 Month Notice on the following basis:

*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 parties confirmed the 2 Month Notice was served on the Tenants in person on November 1, 2016.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 49(2) of the *Act* prevents a landlord from ending a tenancy for landlord's use of property before the end of a fixed term. It states:

*Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*

- (a) not earlier than 2 months after the date the tenant receives the notice,*
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and*
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.*

[Underlining added.]

In this case, the fixed term tenancy does not end until May 31, 2018; thereafter, it may continue on a month-to-month basis. Accordingly, pursuant to section 49(2) of the *Act*, I find that the 2 Month Notice issued by the Landlord is null and void, and is cancelled. The Tenancy will continue until otherwise ended in accordance with the *Act*.

As the Tenants have been successful, I grant them recovery of the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from a future rent payment.

In light of my findings above, it has not been necessary for me to consider the Tenants' request for more time to make an application to cancel a notice to end tenancy.

### Conclusion

The 2 Month Notice issued by the Landlords is cancelled. The Tenancy will continue until otherwise ended in accordance with the *Act*.

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 04, 2017

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Residential Tenancy Branch