



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, CNQ, OLC, FF

### Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property and Because the Tenant Does not Qualify for Subsidized Rental Unit, dated December 20, 2016 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants and their English language interpreter, XYL (collectively "tenants") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 37 minutes in order to allow both parties to fully present their submissions. The tenants confirmed that their interpreter had authority to assist them at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package as well as the tenants' amendment to their application, dated January 9, 2017. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and amendment.

The landlord said that she did not serve her written evidence package to the tenants, only to the Residential Tenancy Branch ("RTB") on January 23, 2017, the day before this hearing. I received the landlord's written evidence package. The tenants said that they did not receive it. I advised the landlord that I could not consider her written evidence at this hearing or in my decision because it was not served to the landlord as required by Rule 3.1 of the RTB *Rules of Procedure*.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to add a claim for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement. The tenants filed their amendment requesting this relief. The landlord had notice of the claim, as she acknowledged receiving and reviewing the amendment, prior to the hearing.

The landlord testified that the tenants were served with the 2 Month Notice on December 20, 2016, by way of posting to their door. The tenants confirmed receipt of the notice on December 20, 2016. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the 2 Month Notice on December 20, 2016.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

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

### Background and Evidence

Both parties agreed to the following facts. This tenancy began on October 1, 2016 and is for a fixed term until October 1, 2017. Monthly rent in the amount of \$1,300.00 is payable on the first day of each month. A security deposit of \$800.00 was paid by the tenants. As advised to the landlord during the hearing, this security deposit amount is above the legal allowable amount of half a month's rent, as per section 19 of the *Act*. Both parties signed a written tenancy agreement and a copy was provided for this hearing. The tenants continue to reside in the rental unit.

The landlord's 2 Month Notice indicates an effective move-out date of February 28, 2017. The reason on the notice states the following:

- *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 tenants seek to cancel the landlord's 2 Month Notice because the parties are in a fixed term tenancy agreement until October 1, 2017. The tenants said that they did not enter into a written agreement with the landlord to end the fixed term tenancy earlier than October 1, 2017. The landlord testified that the 2 Month Notice is the tenants' agreement to move out.

The tenants also seek an order for the landlord to comply with providing a signed declaration to "BCH," the authority that governs the rental assistance program for tenants. The tenants provided a copy of a letter from BCH, dated December 8, 2016 ("BCH letter"), that they asked the landlord to answer but they said that the landlord refused to do so. The tenants explained that this information is required in order for BCH to process their rental assistance application, in order to obtain a rental subsidy for them to pay rent to the landlord for this rental unit. The landlord said that she only received the BCH letter with the tenants' application for this hearing, not before. The landlord said that she did not find it necessary to answer the BCH letter and that she did not want to do so.

The tenants seek to recover the \$100.00 filing fee paid for their application.

### Analysis

#### 2 Month Notice

In accordance with section 49(8) of the *Act*, the tenants must file their application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenants received the 2 Month Notice on December 20, 2016 and first filed their application to dispute it on December 24, 2016 and later amended it on January 9, 2017 to add another claim. Accordingly, I find that the tenants' application was first filed within the fifteen day limit under the *Act*.

Where tenants apply to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

Sections 49(2) and (3) of the *Act*, state in part (emphasis added):

*49 (2) 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*

***...(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.***

*(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

Both parties agreed that this tenancy is for a fixed term period until October 1, 2017. The tenants did not provide a written agreement to the landlord in order to end the fixed term tenancy earlier than the above date. A 2 Month Notice is not an agreement by the tenants to move out earlier. It is a notice issued by one party, the landlord, in order to end the tenancy unilaterally. I find that the landlord cannot end the tenancy prior to the end of the fixed term, as per section 49(2) of the *Act*.

Accordingly, the landlord's 2 Month Notice to end the tenancy on February 28, 2017, is invalid. As advised to both parties during the hearing, the landlord's 2 Month Notice, dated December 20, 2016, is cancelled and of no force or effect. The landlord is not entitled to an order of possession based on the 2 Month Notice. This tenancy continues until it is ended in accordance with the *Act*.

#### *Order to Comply*

As per section 62(3) of the *Act*, I have the authority to make any order necessary to give effect to the rights, obligations and prohibitions under the *Act*, including an order for the landlord or tenant to comply with the *Act*. I find that the tenants provided sufficient documentary evidence to demonstrate that BCH requires a signed declaration from the landlord before it can process the tenants' eligibility for rental assistance. As per the BCH letter:

*"Once the above information is received we can finish processing your application and determine your eligibility for rental assistance."*

I find that in order for the tenants to continue their tenancy, abide by section 26 of the *Act* and pay their rent to the landlord, they require rental assistance from BCH as per their testimony. If the tenants are unable to pay their rent or are late in doing so, they could be served with a notice to end tenancy for non-payment or late payment of rent. The tenants' eligibility for rental assistance can only be determined once the landlord provides a signed declaration to BCH.

Accordingly, I order the landlord to provide a signed declaration responding to the BCH letter of December 8, 2016 in order for BCH to process the tenants' rental assistance application. I order the landlord to provide the following information:

*“Verification of accommodation type – please provide a signed declaration from the landlord which describes the rental unit, and identifies whether the bathroom and kitchen are private or shared.”*

If the landlord fails to provide the above information, the tenants have leave to reapply at the RTB for dispute resolution.

#### Filing Fee

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

#### Conclusion

The landlord's 2 Month Notice, dated December 20, 2016, is cancelled and of no force or effect. The landlord is not entitled to an order of possession based on the 2 Month Notice. This tenancy continues until it is ended in accordance with the *Act*.

I order the landlord to provide a signed declaration responding to the BCH letter of December 8, 2016 letter, as noted above. If the landlord fails to provide the above information, the tenants have leave to reapply at the RTB for dispute resolution.

I order the tenants to deduct \$100.00 from their future rent payable to the landlord for this tenancy, in full satisfaction of the monetary award for the application 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: January 25, 2017

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Residential Tenancy Branch