



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes CNL MNDC OLC RP LRE RR FF

### Introduction

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

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72; and,
- various other remedies under the Act.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

### Issues

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 recover the filing fee for this application from the landlord?

### Background & Evidence

The parties entered into a one year fixed term tenancy beginning on December 15, 2016 and ending December 14, 2017 for a monthly rent of \$1800.00 payable on the 15<sup>th</sup> day of each month. The tenants paid a security deposit of \$900.00 at the start of the tenancy. The tenancy agreement contains a clause that either party has the right to end the lease with 60 days' notice at any time during the term.

The landlord served the tenants with the 2 Month Notice on February 28, 2017 on the grounds the property had been sold. The effective date of the Notice is April 30, 2017. The landlord testified that he has an accepted offer on the property and the purchaser is taking possession on May 1, 2017. The landlord submits the tenants agreed to the 60 day clause at the time of signing the lease and did so under no duress.

The tenants submit they entered into a 12 month fixed term lease. The tenants submit they only agreed to the 60 day clause as the landlord talked about putting the property on the market close to the expiry of the lease not months after they first moved in.

### Analysis

Pursuant to section 49(2)(c) of the Act a landlord may not end a tenancy for landlord's use of property effective on a date that is earlier than the date specified as the end of the term.

Pursuant to section 5 of the Act, landlords and tenants may not avoid or contract out of this Act or the Regulations, and any attempt to do so is of no effect.

I find the parties entered into a 12 month fixed term lease which does not have an end date until December 14, 2017. The landlord is not permitted to end the tenancy for landlord's use of property with an effective date prior to this end date. Further, I find the 60 clause in the fixed term lease signed by the parties is an attempt to contract out of the Act and is therefore of no effect.

Accordingly, the 2 Month Notice to End Tenancy dated February 28, 2017, is hereby cancelled and of no force or effect.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord. The tenants may reduce a future rent payment in the amount of \$100.00.

### Conclusion

I allow the tenants application to cancel the landlord's 2 Month Notice, dated February 28, 2017, which is hereby cancelled and of no force or effect. This tenancy continues until it is 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: March 27, 2017

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Residential Tenancy Branch