



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNL, O

### Introduction

The hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Two Month Notice to End Tenancy and for "other".

The male Tenant stated that on, or about, March 29, 2017 the Application for Dispute Resolution, the Notice of Hearing, and 10 pages of evidence that was submitted with the Application were sent to the Respondent, via registered mail. The Respondent acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On April 11, 2017 the Respondent submitted 22 pages of evidence to the Residential Tenancy Branch. The Respondent stated that this evidence was served to the Tenants on, or about, April 10, 2017. The male Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties, including the property owner not named in these proceedings (hereinafter referred to as the Property Owner), were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were also advised of their legal obligation to speak the truth at the proceedings.

### Issue(s) to be Decided

Should the Two Month Notice to End Tenancy be set aside?

### Background and Evidence

The Tenants and the Respondent agree that this tenancy began on August 01, 2015 and that there is a written tenancy agreement that names the Tenants, the Respondent, and the Property Owner. A copy of this agreement was submitted in evidence.

The Tenants and the Respondent agree that the written tenancy agreement is signed by the Tenants and the Property Owner. The parties agree that it is not signed by the Respondent.

The Respondent stated that he is also an owner of the rental unit and that the Property Owner is a co-owner who signed the tenancy agreement on his behalf because he was out of town when the agreement was signed.

The Property Owner stated that the Respondent is a co-owner of the rental unit and that she did not sign the tenancy agreement on behalf of the Respondent. She stated that the Respondent is named on the tenancy agreement simply to inform the Tenants of the identity of the other owner and to provide them with his contact information as she anticipated being unavailable in the future due to an upcoming surgery.

The Tenants and the Respondent agree that they did not meet each other prior to the start of the tenancy agreement and that they did not discuss any of the terms of the tenancy prior to the agreement being signed.

The male Tenant stated that he dealt with the Property Owner in all matters relating to the tenancy, except for one occasion when he dealt with the Respondent regarding replacing the hot water tank.

The Respondent stated that the Property Owner dealt with most matters relating to this tenancy, although he dealt with the Tenants regarding replacing the hot water tank and he thinks he also dealt with them regarding the furnace in September of 2015.

The Property Owner stated that she is the primary contact for this tenancy.

The Tenants and the Respondent agree that on March 18, 2017 the Respondent served the male Tenant with a 2 Month Notice to End Tenancy for Landlord's Use, which declared that the Respondents must vacate the rental unit by May 31, 2017.

The Respondent and the Property Owner agree that on March 18, 2017 the Property Owner was not aware that the Respondent was serving the Notice to End Tenancy to the Tenants. The Respondent and the Property Owner further agree that the Respondent was not acting with the knowledge and consent of the Property Owner when this Notice to End Tenancy was served to the Tenants.

The Tenants and the Respondent agree that the 2 Month Notice to End Tenancy does not declare why the tenancy is ending. A copy of the tenancy agreement was submitted in evidence and there is nothing on the Notice to End Tenancy that explains why this tenancy is ending.

## Analysis

The *Residential Tenancy Act (Act)* defines a "landlord" in relation to a rental unit as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this *Act* in relation to the rental unit; or
- (d) a former landlord, when the context requires this.

No evidence was submitted that would suggest the Respondent is a landlord as that term is defined by sections (1)(b), 1(c), or 1(d) of the *Act*.

On the basis of the signed tenancy agreement and the undisputed testimony, I find that the Property Owner is the landlord of this rental unit as that term is defined by section (1)(a)(i) of the *Act*.

Although the Respondent did not sign the tenancy agreement, he is named on the tenancy agreement and I find that he is a landlord as that term is defined by section 1(a)(i) of the *Act*. As he is a co-owner of the rental unit I find that the Property Owner was acting must be acting on his behalf when she entered into the tenancy agreement with the Tenants. I therefore find that he has the right to end this tenancy, providing he serves the Tenants with a valid notice to end the tenancy and he is able to establish grounds to end the tenancy.

I find that the 2 Month Notice to End Tenancy, dated March 18, 2017, which was served pursuant to section 49 of the *Act* does not comply with section 49(7) of the *Act*. Section 49(7) of the *Act* stipulates that a notice served pursuant to section 49 of the *Act* must comply with section 52.

Section 52(c) of the *Act* stipulates that to be effective a notice to end a tenancy that is served pursuant to section 49 of the *Act* must state the grounds for ending the tenancy. As the 2 Month Notice to End Tenancy the Respondent served on March 18, 2017 did not declare why the tenancy was ending, I find that the Notice to End Tenancy did not comply with section 52(c) of the *Act* and that it therefore has no force or effect.

As the 2 Month Notice to End Tenancy the Respondent served on March 18, 2017 has no force or effect, I grant the Tenants' application to set aside this Notice to End Tenancy.

### Conclusion

The 2 Month Notice to End Tenancy the Respondent served on March 18, 2017 is set aside. This tenancy shall continue 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: May 04, 2017

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Residential Tenancy Branch