



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, FF

### Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant TF (the "tenant") confirmed she represented both co-tenants.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 2 Month Notice or the tenant's application for dispute resolution. The tenant confirmed receipt of the landlord's 2 Month Notice on May 5, 2017. The landlord confirmed receipt of the tenant's application for dispute resolution. The parties confirmed that neither had submitted any written evidence. . In accordance with section 88 of the *Act*, I find that the tenants were duly served with the landlord's 2 Month Notice. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application for dispute resolution.

### Issue(s) 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 recover the filing fee for this application?

### Background and Evidence

The parties agreed on the following facts. This tenancy began sometime in 2013. The current monthly rent is \$650.00. No security deposit or pet damage deposit was paid by the tenants. The rental unit is a mobile situated on the landlord's property. The landlord operates a vineyard on the property.

Neither party submitted a copy of the landlord's 2 Month Notice into written evidence. The parties testified that the reason provided on the 2 Month Notice is that the rental unit will be occupied by the landlord or the landlord's close family member.

The landlord testified that he intends the rental unit to be used to house seasonal workers whom he employs at the vineyard. He said that in previous years the workers were housed in guest rooms in the main residence but because his child has returned home from post-secondary studies that arrangement is no longer possible.

### Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

Both parties testified that the 2 Month Notice form issued by the landlord lists the reason for the tenancy to end as, the rental unit will be occupied by the landlord or the landlord's close family member. The landlord testified that the rental unit will not be occupied by himself or a family member but by seasonal workers. Consequently, I find that the landlord has not shown that the rental unit will be used for the purpose stated in the 2 Month Notice and cancel the 2 Month Notice.

### Conclusion

The tenants' application to cancel the 2 Month Notice is allowed. The 2 Month Notice is of no continuing force or effect. This tenancy will continue until ended according to the *Act*.

As the tenants' application was successful, the tenants are entitled to recovery of the \$100.00 filing fee for the cost of this application. As this tenancy is continuing, I allow the tenants to recover his \$100.00 filing fee by reducing the monthly rent by that amount on the next monthly rental payment to the landlord.

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: June 19, 2017

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Residential Tenancy Branch

