



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

<u>Dispute Codes</u>	Landlord:	OPL FF O
	Tenant:	CNL FF O

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application is dated July 11, 2017 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession based on a Two Month Notice to End Tenancy for Landlord’s Use of Property, dated June 6, 2017 (the “Two Month Notice”);
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenants’ Application is dated June 30, 2017 (the “Tenants’ Application”). The Tenants applied for the following relief pursuant to the *Act*:

- an order cancelling the Two Month Notice; and
- other unspecified relief.

The Landlord attended the hearing in person, as did the Tenants. All parties provided a solemn affirmation at the beginning of the hearing.

The Landlord testified that the Landlord’s Application package was served on the Tenants by registered mail on July 17, 2017. The Tenants acknowledged receipt. The Tenants testified that the Tenants’ Application package was served on the Landlord by registered mail on July 6, 2017. The Landlord acknowledged receipt.

Neither party raised any issue 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 oral and written

evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession based on the Two Month Notice?
2. Is the Landlord entitled to recover the filing fee paid to make the Landlord's Application?
3. Is the Tenant entitled to an order cancelling the Two Month Notice?

### Background and Evidence

The parties agreed a fixed-term tenancy was in effect from September 1, 2016 to August 31, 2017, which may have continued on a month-to-month basis thereafter. Rent in the amount of \$2,450.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$1,225.00 at the beginning of the tenancy, which the Landlord holds.

The Landlord provided testimony in support of the Two Month Notice. She stated that the fixed term ended on August 31, 2017. Due to illness, the Landlord intended to occupy the rental unit at the end of the fixed term. Accordingly, she issued the Two Month Notice, which had an effective date of August 31, 2017. A copy of the Two Month Notice was submitted into evidence by the Landlord. The Landlord testified the Two Month Notice was served on the Tenants by registered mail on June 15, 2017. A Proof of Service form was submitted into evidence by the Landlord. She testified the Tenants have not moved out and that she is currently living with friends pending the outcome of this hearing.

The Tenants acknowledged receipt of the Two Month Notice on June 21, 2017. However, they testified the parties discussed continuing the tenancy at the beginning of June 2017. The Tenants testified that they advised the Landlord at that time that they wished to continue the tenancy on a month-to-month basis. The Landlord denied making an agreement to continue the tenancy after the fixed term.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 49 of the *Act* permits a landlord to end a tenancy by issuing a notice to end tenancy for landlord's use of property. In this case, the Landlord issued the Two Month Notice on the basis that she would occupy the rental unit. The Landlord provided testimony that she is ill and can no longer live in Calgary due to the weather. She is currently living in Vancouver with friends. In reply, the Tenants testified they had a discussion about continuing the tenancy on a month-to-month basis and indicated that they wished to remain.

I find that the Two Month Notice, which complies with section 52 of the *Act*, is a valid notice to end the tenancy. I find there is insufficient evidence before me to conclude the Landlord does not intend to occupy the rental unit at the end of the fixed term, as indicated on the Two Month Notice. Accordingly, I find that the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants. In addition, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Landlord's Application, which I order may be deducted from the security deposit held.

The Tenants' Application is dismissed.

### Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Tenants' Application is dismissed.

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: September 14, 2017

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Residential Tenancy Branch