



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, FFL, CNL, FFT

Dispute Codes      CNL, FF, MNDC

### Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (the Act) :

The landlords requested:

- An order of possession pursuant to Section 55; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72

The tenants requested

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties acknowledged receipt of the others documentary evidence.

### Issues to be Decided

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

Is either party entitled to recover the filing fee for this application from the other?

### Background and Evidence

The landlord gave the following testimony. The tenancy began on or about four years ago. The parties agreed to and signed a two year fixed term tenancy that began on September 1, 2016 and is scheduled to end on August 31, 2018. Rent in the amount of \$1250. 00 is payable in advance on the first day of each month. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on October 27, 2017 with an effective date of December 31, 2017. The landlords testified that due to health and financial misfortune, they had to sell the unit. The landlord's 2 Month Notice, entered into written evidence by both parties, identified the following reason for seeking an end to this tenancy:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The landlord testified that they have tried numerous times to come to some arrangement with the tenants by offering financial compensation but have been unsuccessful. The landlord testified that the only reason they chose this course of action was due to the financial strain they were under.

The tenants gave the following testimony. The tenants testified that they would like to assist the landlord and despite his generous offers to financially compensate them to move early, they wish to remain in the unit until the end of the fixed term as agreed; August 31, 2018.

### Analysis

Section 49(2)(c) of the Act addresses the issue before me as follows:

**49** (1) In this section:

**"close family member"** means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

**"family corporation"** means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

**"landlord"** means

- (a) for the purposes of subsection (3), an individual who
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest;

**"purchaser"**, for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(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

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

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

Both parties agreed that they are currently in the midst of a fixed term tenancy that ends on August 31, 2018. Despite the landlords' financial hardship, the tenants are not required to vacate the unit, accordingly; I hereby set aside the Two Month Notice to End Tenancy for Landlords Use of Property dated October 27, 2017, and it is of no force or effect.

The tenants are entitled to the recovery of the 100.00 filing fee for this application.

Conclusion

The notice to end tenancy is set aside, the tenancy continues. The tenants are granted a monetary order of \$100.00.

The landlords' application is dismissed without leave to reapply.

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 15, 2018

---

Residential Tenancy Branch