



# 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 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 pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence on file.

### 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?*

### Background & Evidence

The rental unit is one half of a duplex house. The tenancy began on June 1, 2013. The current monthly rent is \$925.00 and is payable on the 1<sup>st</sup> day of each month. The current landlord purchased the property in 2015.

The landlord served the tenants with a 2 Month Notice on November 17, 2017. The tenant's application to dispute the 2 Month Notice was filed within the time period required under the Act. The 2 Month Notice was issued on the following grounds as per page 2 of the Notice:

- *The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant*

The landlord submits the house is settling and has submitted a report from a surveyor showing the extent of the problem and a report from a contractor describing the work required to lift the foundation and timelines required for vacant possession. The landlord submits they would still need to get permits from the city for the work but the city will not issue final permits until they obtain a hazmat survey due to it being a renovation job. The landlord submits they would need vacant possession in order to conduct the hazmat survey.

The tenants are disputing the 2 Month Notice on the grounds that it was not issued in good faith. The tenants submit that the landlord is only seeking to obtain an increased rent from the rental unit. The tenants submit the landlord does not have any permits in place for the planned renovation work and the landlord's own evidence suggests they still need to apply for permits.

### Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

The landlord's own evidence was that the planned renovation or repair work would require permits from the city. The landlord has not obtained any necessary permits or submitted any evidence that permits are not necessary or that the city would not issue permits until they first obtain a hazmat survey.

Accordingly, the 2 Month Notice to End Tenancy dated November 16, 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 tenant's application to cancel the landlord's 2 Month Notice, dated November 16, 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: February 06, 2018

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Residential Tenancy Branch