



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing dealt with the tenants' application for;

- cancellation of the landlord's 2 Month Notice to End for Landlord's use of the rental property ("2 Month Notice") pursuant to section 49 of the *Act*.

The landlord did not attend this hearing, while the tenants were represented at the hearing by tenant L.P. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord's 2 Month Notice after receiving it in person on December 1, 2017. Pursuant to section 88 of the *Act*, the tenants are found to have been duly served with the landlord's 2 Month Notice in accordance with the *Act*.

The tenant explained that she served the landlord with her application for dispute resolution by placing a copy of her application for dispute and evidentiary package in the landlord's mailbox on December 22, 2017. Pursuant to sections 88, 89 & 90 of the *Act* the landlord is deemed served with these documents on December 25, 2017, three days after their placement in the mailbox.

### Issue(s) to be Decided

Can the tenants cancel the landlord's 2 Month Notice?

### Background and Evidence

The tenant provided undisputed testimony that the tenancy in question began on June 15, 2017 but she explained that because the unit was occupied by other persons, the

tenants were unable to take possession of the rental unit until July 1, 2017. Rent is \$1,200.00 per month.

On December 1, 2017 the tenant received a 2 Month Notice to End Tenancy for Landlord's Use. The tenant explained that there are currently 13 people living above her on the top floor of the rental home and she said that the landlord informed her that these people would be occupying her rental unit. The tenant alleged that these people did not meet the definition of "close family member" as required by section 49 of the *Act*.

#### Analysis – Order of Possession

Section 49 of the *Act* provides that upon receipt of a 2 Month Notice to end tenancy for landlord's use of property the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant said she filed her application for dispute on December 14, 2017 and therefore met her obligation under section 49 of the *Act*. If a tenant files an application to dispute the notice within the allowable time frame, the landlord bears the burden of proving the grounds for the 2 Month Notice. Because the landlord did not attend the hearing I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenants' application to cancel the 1 Month Notice.

#### Conclusion

The tenants were successful in cancelling the landlord's 2 Month Notice. 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: February 23, 2018

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Residential Tenancy Branch