



# 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 for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") by the tenants to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 3, 2018 ("2 Month Notice") and to recover the cost of the filing fee.

The tenants and the landlords attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The parties confirmed that they received evidence from the other party and had the opportunity to review the relevant evidence prior to the hearing. I find the parties were sufficiently served as a result.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

### Issues to be Decided

- Should the 2 Month Notice be cancelled?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The parties submitted a copy of the tenancy agreement was submitted in evidence. A month to month tenancy agreement began on October 1, 2013. Monthly rent of \$1,300.00 is due on the first day of each month. The tenants paid a security deposit of \$650.00 at the start of the tenancy.

The tenants confirmed that they were served with the 2 Month Notice on January 3, 2018 and disputed the 2 Month Notice on January 17, 2018. A copy of the 2 Month Notice was submitted in evidence. The effective vacancy date listed on the 2 Month Notice is March 31, 2018.

The landlords indicated the following reason on the 2 Month Notice as the reason to end the tenancy:

“The rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child; or the parent or child of that individual’s spouse)”.

[Reproduced as written]

The landlords’ position is that the 2 Month Notice was served on the tenants as the daughter of landlord AS, CR, was planning to move into the rental unit with her family for approximately eight months while their primary residence was going to be significantly renovated. The landlords submitted in evidence letters from CR in support of this arrangement and also a letter from a family relative that would be completing the renovations, DR.

The tenants’ response was two-fold. The first issue raised was that each landlord did not hold at least ½ of the full reversionary interest as required in sections 49(1) and 49(3) of the *Act* which I will address further below. The second issue raised was good faith. The tenants referred to a Notice To Enter Premises document dated December 29, 2017 which indicates that a showing to a prospective purchaser was scheduled for January 3, 2018, which was the same date the 2 Month Notice was issued.

The tenants raised the issue that if a prospective purchaser was being shown the rental unit the same day a 2 Month Notice was being issued that it supported a lack of good faith which is required under the *Act* when issuing a 2 Month Notice.

The landlords' confirmed that the listing to sell the rental property was not cancelled until January 25, 2018.

The testimony of the landlords was that they were in agreement of issuing the 2 Month Notice; and that the decision was discussed over the having CR and her family reside in the rental unit during the Christmas break in December 2017.

### Analysis

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

The 2 Month Notice issued dated and served on January 3, 2018 has an effective vacancy date of March 31, 2018. The tenants disputed the 2 Month Notice on January 17, 2018 which is within the fifteen day timeline provided for under section 49 the *Act* to dispute a 2 Month Notice.

I will first deal with the tenants' first issue. Section 49(1) and section 49(3) of the *Act* read as follows:

#### **Landlord's notice: landlord's use of property**

**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.

(3) **A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.**

[My emphasis added]

Based on the above, as all three landlords AS, JS, and WS, attended the hearing and confirmed their support for the 2 Month Notice, I find that 100% of the landlords agreed to the intent of the 2 Month Notice and that they were also in total agreement in ending the tenancy based on the 2 Month Notice. Therefore, while the landlords should have all been named on the 2 Month Notice, I am also authorized pursuant to section 68(1) of the *Act* to consider that this was an inadvertent oversight on the part of the landlords and could correct the 2 Month Notice to include all three names of the landlords as I could find the person receiving the notice knew, or should have known, the information that was omitted from the notice and under the circumstances, would be reasonable to amend the notice. However, I will not correct the 2 Month Notice in this particular matter for reasons I will address later in this decision. Given the above, I reject the tenants' claim that the individual landlords hold less than 1/2 of the full reversionary interest and

find that the three individual landlords combined who all agreed to end the tenancy based on the issuance of the 2 Month Notice, hold 100% of the reversionary interest combined. In other words, even if one of the landlords did not agree to the 2 Month Notice being served, which is not the case in the matter before me, two of the three landlords would have not less than  $\frac{1}{2}$  of the full reversionary interest.

I will now deal with the good faith argument raised by the tenants. When tenants have applied to cancel a 2 Month Notice and call into question the "good faith" requirement, the onus lies on the landlords to prove that the 2 Month Notice was issued with an honest intention, that there is absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

The landlords confirmed that they served a notice to enter the premises to show the unit on January 3, 2018 to a prospective purchaser and that the home was still listed for sale until the listing was cancelled several weeks later on January 25, 2018. There is no dispute that the reason listed on the 2 Month Notice was not related to the sale of the rental unit and was instead intended for a family member of one of the landlord's to reside in the rental unit. Based on the evidence before me, I find that the landlords did not issue the 2 Month Notice in good faith.

In reaching this finding I have considered that the 2 Month Notice was dated January 3, 2018 which is the same date the landlords entered the rental unit to show a prospective purchaser the rental unit for the purposes of buying the rental property. In addition, the landlords made the decision to continue the listing for sale of the property several weeks after issuing the 2 Month Notice before they eventually cancelled the listing. On the balance of probabilities, I find this satisfies me that the 2 Month Notice was not issued in good faith. Therefore, I find the landlords have provided insufficient evidence that they intended in good faith to occupy or have a close family member occupy the rental unit at the time the 2 Month Notice was issued. Accordingly, **I cancel the 2 Month Notice.** I find the 2 Month Notice was not issued in good faith. I note that this is the reason that I did not amend the 2 Month Notice above as I find the amendment to be moot as I have cancelled the 2 Month Notice.

**I order** the tenancy to continue until ended in accordance with the *Act*.

As the tenants' application had merit, I grant the tenants' the recovery of their filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*. **I authorize** the tenants to deduct that amount from a future month's rent on a one-time basis in the amount of **\$100.00** in full satisfaction of the recovery of their filing fee under the *Act*.

Conclusion

The 2 Month Notice issued by the landlord is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the *Act*.

The tenants have been authorized to deduct \$100.00 from a future month's rent in full satisfaction of the recovery of their filing fee as their application had merit.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: March 13, 2018

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Residential Tenancy Branch