



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

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 17, 2018. No issues with service were made by either party. As such, I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

### Preliminary Issue(s)

At the outset both parties agreed to the renaming of the named landlord from an individual to the corporation as per the 2 Month Notice dated January 23, 2018.

It was also clarified that the tenant filed an amendment to the application for dispute of a second 2 Month Notice dated January 23, 2018. The tenant confirmed that the landlord had advised him of cancelling the 2 Month Notice dated January 11, 2018 and that no further action was required for that 2 Month Notice. As such, the hearing proceeded on the tenant's request to cancel the 2 Month Notice dated January 23, 2018.

The tenant also made a request for compensation as part of his original application for dispute filed on January 15, 2018 however the tenant has failed to provide any specific particulars regarding the compensation request to prevent further eviction notice(s). As such, this portion

of the tenant's claim is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation periods.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 Month Notice?

Is the tenant entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 1, 2011 on a fixed term tenancy ending on June 1, 2012. The monthly rent began at \$1,600.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$800.00 was paid on May 3, 2011. A submitted copy of a Notice of a Rent Increase shows rent was increased to \$1,879.00 to begin on January 1, 2018.

Both parties agreed that the landlord served the tenant with the 2 Month Notice dated January 23, 2018 via Canada Post Registered Mail on January 23, 2018. The 2 Month Notice sets out an effective end of tenancy date of March 31, 2018 and one reason selected as:

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).

The tenant seeks an order cancelling the 2 Month Notice dated January 23, 2018 and if successful recovery of the \$100.00 filing fee.

The landlord's agent provided undisputed affirmed testimony that the landlord was a corporation in which one of the owner's close family member (daughter) intends in good faith to occupy the rental unit. The landlord's agent could not clarify how the named landlord (a corporation) could have a close family member occupy the rental unit. The landlord's agent sought permission to amend the 2 Month Notice changing the stated reason for the 2 Month Notice. Permission to amend the 2 Month Notice was denied during the hearing.

### Analysis

Section 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

Section 52 of the Act reads in part as follows:

- 52 In order to be effective, a notice to end tenancy must be in writing and must...
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45(1) or (2) [tenant's notice], **state the grounds for ending the tenancy**, and
  - (e) when given by a landlord, be in the approved form.

In this case it is clear based upon the landlord's undisputed testimony that the landlord is not an individual, but a corporation as agreed upon at the outset of the hearing. As such, I find that the landlord has inadvertently selected the incorrect reason for the notice.

Since the landlords failed to properly identify the grounds for ending the tenancy, the landlord has not complied with the statutory requirement established under section 52(d) of the Act, I find that the landlord's 2 Month Notice dated January 23, 2018 is of no effect. The tenancy shall continue. For these reasons, I allow the tenant's application to cancel the landlord's 2 Month Notice.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenant to withhold one-time \$100.00 from the next months rent due upon receipt of this decision.

### Conclusion

The tenant's application to cancel the 2 Month Notice dated January 23, 2018 is granted. 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: March 13, 2018

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Residential Tenancy Branch