



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property.

The tenant and the landlord attended the hearing, and the landlord gave affirmed testimony.

### Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

The landlord testified that this month-to-month tenancy began in late 2015 and the parties thereafter entered into a written tenancy agreement for a tenancy to begin on March 1, 2016, and the tenant still resides in the rental unit. Rent in the amount of \$375.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. No security deposit or pet damage deposit was collected by the landlord.

The landlord further testified that he served the tenant by registered mail with a Two Month Notice to End Tenancy for Landlord's Use of Property on January 10, 2018, a copy of which has been provided as evidence for this hearing. It is dated January 10, 2018 and contains an effective date of vacancy of April 30, 2018. The reason for issuing it states: "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 landlord cancelled the notice in writing because the parties had exchanged emails wherein the tenant had agreed to move out for the summer months so the landlord could use the rental unit as vacation property, and then move in after summer.

The landlord served another Two Month Notice to End Tenancy for Landlord's Use of Property on January 29, 2018 by registered mail, and a copy has been provided for this hearing. It is dated January 29, 2018 and contains an effective date of vacancy of May 31, 2018. The reason for issuing it states: "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 landlord testified that the rental unit was previously used as a vacation home for the landlord's family and submitted that as such the *Residential Tenancy Act* does not apply. He further testified that pursuant to the *Residential Tenancy Act*, the landlord may convert the rental unit to non- residential use.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to establish good faith intent to use the rental property for the purpose contained in that notice.

In this case, the landlord gave the notice for occupancy by the landlord or the landlord's close family member, and did so twice. The landlord also indicated that it is vacation property and the tenant had agreed to move out so the landlord could use it for the summer months. He also submits that the *Residential Tenancy Act* does not apply to vacation property. However, a tenancy agreement exists and the landlord collects rent, and therefore a tenancy exists and the *Residential Tenancy Act* does apply. The landlord also testified that the rental unit will be converted to non-residential use, but has not used that recital in the notice.

I am not satisfied that the landlord has established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act* or good faith intent to use the rental unit for any purpose set out in the *Act*, and I therefore cancel it.

### Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated January 10, 2018 is hereby cancelled.

The Two Month Notice to End Tenancy for Landlord's Use of Property dated January 29, 2018 is hereby cancelled, and the tenancy continues.

This order is final and binding and may be enforced.

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 28, 2018

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Residential Tenancy Branch