



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) under the *Residential Tenancy Act* (“Act”) by the tenant to cancel two 2 Month Notices to End Tenancy for Landlord’s Use of Property dated January 30, 2018 and February 20, 2018 (“2 Month Notices”) and to recover the cost of the filing fee.

The tenant, the tenant’s legal counsel (“counsel”), and the son of the landlord who is also the agent of the landlord (“agent”) 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 make submissions to me. Both parties confirmed that they did not have any witnesses to present at the hearing.

Neither party raised any concerns regarding the service or receipt of documentary evidence.

### Preliminary and Procedural Matters

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties.

In addition, there was no concern raised for the agent for the landlord representing his father at the hearing and as a result, the landlord agent was permitted to represent the landlord.

### Issues to be Decided

- Should the two 2 Month Notices be cancelled or upheld?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The parties agreed that there is no written tenancy agreement between the parties. There was no dispute that the tenancy began on or about July 2011. The parties agree that monthly rent is \$1,046.00 and is due on the first day of each month.

The parties agreed that the landlord served two 2 Month Notices on the tenant. The first being dated January 30, 2018 ("2 Month Notice A"), and a second being dated February 20, 2018 ("2 Month Notice B"). The reason listed on 2 Month Notice A states "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 reasons listed on 2 Month Notice B 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 agent testified that there were two 2 Month Notices issued because his father is 82 years old and "not mentally 100%" and "didn't know about the forms". The agent failed to submit any evidence to support that his father was not mentally well. The agent was asked who intended to reside in the rental unit, the agent confirmed it was him. Counsel asked the agent how old he was and the agent refused to answer and asked how that was relevant. When the agent was advised that it was a reasonable question given that he had indicated he was currently living with his parents without paying rent as the agent confirmed he was not renting, the agent still refused to answer. At that point, I rendered my decision that the reason provided regarding the landlord being "not mentally 100%" without any supporting evidence, and claiming that the landlord "didn't know about the forms" was insufficient to prove that the 2 Month Notices were issued in good faith. I will provide further analysis below, however I note that only at this time, did the agent state he was 47 years old which was after my decision was rendered.

### Analysis

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

When a tenant disputes a 2 Month Notice, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition, when a tenant has filed to cancel a 2 Month Notice for Landlord's Use of Property and calls into question the "good faith" requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an honest intention, with no ulterior motive to end the tenancy.

I find the agent's claim that his father, the landlord is "not mentally 100%" and "didn't know about the forms" to be unsupported by evidence such as a letter from a family physician and is illogical given that his son is representing him at the hearing and that it would be reasonable to

conclude that the landlord would consult with his son/agent prior to issuing an eviction notice if he was confused in any way. I afford no weight to the agent's testimony as I find the agent to be unprepared, confrontational, illogical and evasive. The tenant and counsel on the other hand were prepared and provided a logical submission. I also find that when two notices are issued for two completely unrelated reasons within weeks of each other that it raises a concern that either of the notices were issued in good faith. Therefore, **I cancel** both 2 Month Notices dated January 30, 2018 and February 20, 2018 respectively as I find there is insufficient evidence that they were served in good faith.

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

I grant the tenant a one-time rent reduction in the amount of **\$100.00** in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

### Conclusion

The two 2 Month Notices dated January 30, 2018 and February 20, 2018 respectively are cancelled due to insufficient evidence that they were issued in good faith.

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

The tenant has been granted a one-time rent reduction in the amount of \$100.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

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: April 11, 2018

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Residential Tenancy Branch