



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### 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.

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 via Canada Post Registered Mail on February 14, 2018. Both parties confirmed that the tenant served the landlord with the submitted documentary evidence via Canada Post Registered Mail on March 26, 2018. Both parties confirmed that the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on April 10, 2018. Neither party raised any issues with service. As both parties have attended and have confirmed receipt of the notice of hearing and the submitted documentary evidence, I am sufficiently satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

### Preliminary Issue

Both parties confirmed that the 2 Month Notice was posted to the rental unit door on January 31, 2018, but the tenant argued that he did not receive the 2 Month Notice posted to his door until February 1, 2018 (3 days later which would require that the 2 Month Notice effective date to be corrected to April 30, 2018 as a result). The landlord argued that although the 2 Month Notice was posted to the rental unit door, she had noticed that the 2 Month Notice was removed from the door on the evening of January 31, 2018 which is confirmation that the 2 Month Notice was received on January 31,

2018. Although both parties confirmed that the 2 Month Notice was posted to the rental unit door, I find that as the landlord is unable to provide sufficient evidence that the tenant retrieved the 2 Month Notice posted to the door on January 31, 2018 that service shall be deemed received as per the tenant's direct testimony. The tenant confirmed receipt of the 2 Month Notice the next day on February 1, 2018. As such, the effective end of tenancy date is corrected to April 30, 2018.

### Issue(s) to be Decided

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

### 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, 2016 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated June 31, 2016. The monthly rent is \$850.00 payable on the last day of each month and security deposit of \$425.00 was paid.

Both parties confirmed that the landlord served the tenant with a 2 Month Notice dated January 31, 2018 by posting it to the rental unit door on January 31, 2018. The 2 Month Notice sets out an effective end of tenancy date of March 31, 2018 (corrected to April 30, 2018 as per the above noted finding) and the selected reason is:

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 31, 2018 as "the fact is has been served with malice and used as a tool to circumvent the RTA rules, instead of serving a proper 1 month notice". The tenant has submitted in support of these claims text messages that the notice is not valid. A review of these text messages show an exchange between the landlord and the tenant regarding A request to pick up rent; to attend and take photographs of the rental unit; a request for the landlord to provide proper notice to inspect the rental; and notification that the tenant has served the landlord with a notice of dispute package via registered mail.

The landlord has responded by stating that the decision for the landlord/owner's son to occupy the only 1 bedroom unit in the 6 unit building was purely to allow the owner's son an opportunity to gain some independence and have privacy for himself.

The tenant argued that at no time has the landlord's agent or the landlord/owner ever given any indication of this possibility for the owner's son to occupy the unit. The tenant argues that the landlord after receiving his complaints via text issued the 2 Month Notice in an attempt to evict. The tenant also stated that the landlord's agent is biased against him by siding with the landlord/owner due to his complaint filed with the owner about the agent.

### 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.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant has argued that the landlord does not in good faith intend to occupy the rental unit.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based. The landlord did not meet her onus of proof.

Further 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* "2. Good Faith Requirement when Ending a Tenancy" helps explain this "good faith" requirement:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy...

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The emails raise serious questions as to whether the landlord is acting in good faith in her issuance of the 2 Month Notice. The 2 Month Notice appears to be an attempt to end the tenancy in a way to circumvent the provisions of a 1 Month Notice to End Tenancy for Cause.

The 2 Month Notice is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

### Conclusion

The tenant's application to cancel the 2 Month Notice 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: April 19, 2018

---

Residential Tenancy Branch