



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 674082 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC FF

### Introduction

This hearing addressed the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's Notice to End Tenancy for Landlord's Use of Property pursuant to section 49; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only tenant B.P appeared at the hearing. The tenant was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenant provided undisputed testimony that the tenant served the landlord in person at his office where the rental cheques are deposited with the tenant's Application for Dispute on February 28, 2018. Pursuant to section 89 & 90 of the *Act*, the landlord is deemed to have been served with the tenant's application for dispute on February 28, 2018.

The tenant confirmed receipt of a 2 Month Notice to End Tenancy for Landlord's Use of Property after it was posted on his door. The notice is dated February 6, 2018 and the tenant recalled that it was found "a few days later." Pursuant to sections 88 & 90 of the *Act*, I find that the tenant was deemed served with the 2 Month Notice on February 9, 2018.

No evidence was supplied to the hearing by the landlord.

### Issue(s) to be Decided

Can the tenant cancel the landlord's Notice to End Tenancy?

### Background and Evidence

Undisputed testimony was provided to the hearing by the tenant that this tenancy began in approximately August 2005. Rent was \$600.00 per month, and rose to its current rate of \$800.00 over the course of the tenancy. A security deposit of \$300.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenant said that in February 2018 he received a 2 Month Notice to End Tenancy with the notice indicating that the landlord planned to convert his rental unit into a caretaker's suite. The tenant argued that the landlord had no intention to convert the unit as the building had not had a caretaker for the past ten years. Furthermore, the tenant explained that rent is paid at the landlord's office, cleaning is done in-house by a person on the 3<sup>rd</sup> floor, and a building captain is available should emergencies arise. The tenant also explained that there was a vacant rental suite which was available until March 2018, and if the landlord's had a true intention of filling the building with a caretaker, they could have used this suite.

### Analysis

Section 49 of the *Act* provides that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 2 Month Notice. Based on the undisputed testimony provided to the hearing by tenant B.P., I find that the 2 Month Notice to End Tenancy was served on the tenant on corrected effective date of February 9, 2018. The tenants disputed this notice on February 27, 2018. The tenant has therefore applied to dispute this notice within the time frame provided by section 49 of the *Act*.

Because the landlord did not attend the hearing and provided no explanation of any of the evidence submitted as part of the tenant's evidentiary package, I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenants' application to cancel the 2 Month Notice.

As the tenant was successful in his application, he may pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the landlord. In place of a monetary award, the tenant may withhold \$100.00 from a future rent payment on **one** occasion.

This tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The tenant was successful in his application to dispute the landlord's 2 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment on **one** occasion in satisfaction for a return of the filing fee.

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: May 9, 2018

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Residential Tenancy Branch