



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated February 9, 2018 (the "Two Month Notice"), pursuant to section 49.

The landlord did not attend this hearing, although I left the teleconference hearing connection open for 33 minutes in order to enable the landlord to call into this teleconference hearing scheduled for 9:00 a.m. The tenants attended the hearing with an Articled Student advocate and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants, their advocate and I were the only ones who had called into this teleconference.

Tenant M.W. testified that she served the landlord with the tenants' Application for Dispute Resolution hearing package ("Application") on February 27, 2018 via registered mail. Tenant M.W. provided a Canada Post receipt and tracking number to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' Application on March 4, 2018, the fifth day after its registered mailing.

Tenant M.W. testified that she served the landlord with the tenants' evidence package on April 12, 2018 via registered mail to the address provided by the landlord on the Two Month Notice. The tenants submitted into evidence a Canada Post tracking number to confirm this registered mailing. Tenant M.W. testified that in addition to sending the evidence package via registered mail, the tenants personally served the landlord's agent with the evidence package on April 17, 2018. I find that the landlord was deemed served

with this package on April 17, 5 days after its mailing, in accordance with sections 88, 89 and 90 of the *Act*. I find that this package was also personally served on the landlord's agent on April 17, 2018 in accordance with section 89 of the *Act*.

I note that 4 days before the hearing the landlord uploaded two letters addressed to whom it may concern, one dated April 24, 2018 and one dated April 27, 2018. The April 24, 2018 states the landlord is out of the country and cannot return to Canada or participate by phone for the hearing on the scheduled time. The April 27, 2018 letter provides the name of a person who the landlord has authorized to represent his interests at this hearing. No one attend the hearing on the landlord's behalf.

#### Issue(s) to be Decided

1. Should the landlord's Two Month Notice be Cancelled?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenants and their advocate, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Tenant M.W. testified that this tenancy began on September 1, 2016 and is currently ongoing. Monthly rent in the amount of \$2,696.20 is payable on the first day of each month. A security deposit of \$1,300.00 and a pet deposit of \$1,300.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. On February 14, 2018, the tenants received the Two Month Notice via regular mail. The Two Month Notice has a stated effective date of April 30, 2018 and states that the reason for the Two Month Notice is that "the rental unit will be occupied by the landlord or the landlord's close family member".

The tenants testified that, based on conversations they had with the landlord, the landlord's agents and one of the landlord's sons, the landlord wanted to either raise the rent above the legal limit set out in section 43 of the *Act*, or evict the tenants to achieve that same goal. In support of this contention the tenants submitted into evidence recordings of conversations between the tenants and the above listed persons. The tenants allege that the landlord is acting in bad faith.

The landlord did not submit any evidence regarding the Two Month Notice or his intention to move either himself or a close family member into the rental unit.

### Analysis

Policy Guideline 2 states that “good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage....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.

In this case, the tenants called the landlord's good faith intent into question; therefore, the burden is on the landlord to establish that he truly intended to move either himself or a close family member into the rental unit. The landlord did not establish his good faith intent as he did not submit or present any evidence regarding the Two Month Notice or his intention to move either himself or a close family member into the rental unit.

In addition, the landlord did not establish that he did not have another purpose that negated the honesty of his intention or demonstrated that he did not have an ulterior motive for ending the tenancy.

### Conclusion

I find that the landlord has not met the burden of proof required to uphold the Two Month Notice as required by Policy Guideline 2. Consequently, I order the Two Month Notice is of no force or effect and is cancelled.

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 07, 2018

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Residential Tenancy Branch