



# 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 (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) and recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the tenant N.D. (the “Tenant”), the Landlord, and the agent for the Landlord (the “Agent”). All parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided by them in the hearing.

## Preliminary Matters

### **Preliminary Matter #1**

At the outset of the hearing the Respondent argued that this is not a Residential Tenancy Branch (the “Branch”) matter as he is not a landlord and the Applicants are not tenants. The Applicant N.D. disagreed stating that they are in fact tenants and have a tenancy agreement. As a result, the Applicant N.D. argued that the *Act* applies.

Based on the above, I find that I must determine whether I have the jurisdiction to hear this matter under the *Act* prior to considering the merits of the Application. Section 1 of the *Act* defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 1 of the *Act* also includes in the definition of a landlord the owner of a rental unit, the owner’s agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement.

When asked, the Respondent and the Agent testified that they rent a free standing home in its entirety from the owner, which contains a self-contained rental suite. They provided a copy of their tenancy agreement with the owner in support of this testimony. The Respondent and Agent also testified that they have permission from the owner to sublet the rental suite. Both parties agreed that the Applicants moved into the rental suite on July 1, 2017, that rent is \$1,000.00 per month, and that a security deposit in the amount of \$500.00 was paid by the Applicants to the Respondent. Although only the last page of the written tenancy agreement was before me for consideration, both parties agreed that a written tenancy agreement was signed matching the testimony provided in the hearing.

Based on the above, I find that the Respondent meets the definition of a landlord under the *Act* and that the Applicants meet the definition of tenants under the *Act*. I therefore accept jurisdiction to hear this matter and as a result, the parties will be referred to as the “Landlord” and the “Tenants” throughout this decision.

## **Preliminary Matter #2**

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

### Issue(s) to be Decided

Are the Tenants entitled to cancellation of a Two Month Notice under the *Act*?

If the Tenants are unsuccessful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Are the Tenants entitled to the recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

### Background and Evidence

The parties agreed that the tenancy began on July 1, 2017, and that rent in the amount of \$1,000.00 is due on the first day of each month. The parties also agreed that a security deposit in the amount of \$500.00 was paid, which the Landlord still holds.

The Tenant stated that they were never served with a proper Two Month Notice in accordance with the *Act* and only ever received a handwritten note advising them to move out. As a result, the Tenant argued that the Notice to End Tenancy is not valid. The Landlord agreed that the Tenants were served with a hand written note advising them to vacate the rental unit and acknowledged that a Two Month Notice was not served on the Tenants as they believed the *Act* did not apply.

The handwritten Notice to End Tenancy in the documentary evidence before me states that the Tenants are to vacate the rental unit by March 31, 2018. It also states that if they vacate by April 30, 2018, the Landlord will provide them with \$200.00 towards the cost of a moving truck rental once proof of this cost is received. Although the handwritten Notice to End Tenancy is signed and contains the first names of the Applicants, it is not dated, does not give the address for the rental unit or the grounds for ending the tenancy, and does not contain all of the information that would ordinarily be contained in a Two Month Notice.

## Analysis

Although the Landlord stated that a proper Two Month Notice was not served on the Tenants as he believed the *Act* did not apply, as stated in the preliminary matters section of this decision, I have already found that the *Act* applies and that the Applicants are tenants and the Respondent is a Landlord. As a result, I find that the Landlord is only entitled to end the tenancy as permitted under the *Act*.

Section 52 of the *Act* states the following with regards to the form and content requirements for Notices to End Tenancy:

### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

As the handwritten Notice to End Tenancy is not dated, does not give the address for the rental unit or the grounds for ending the tenancy, and is not in the approved form, I find that it does not comply with section 52 of the *Act*. As the Notice to End Tenancy Does not comply with section 52, I find that it is not in fact a proper Notice to End Tenancy under the *Act* and is therefore invalid and of no force or effect.

As a result of the above, I order that the tenancy continue in full force and effect until it is ended in accordance with the *Act*. As the Tenants were successful in their Application, I find that they are therefore entitled to a Monetary Order in the amount of \$100.00 for recovery of the filing fee pursuant to sections 67 and 72 of the *Act*.

Conclusion

I order that the handwritten Notice to End Tenancy is of no force or effect

Based on the above, I order that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$100.00. The Tenants are provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 10, 2018

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Residential Tenancy Branch