



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing dealt with the tenants' 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;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenants served the landlord with the notice of hearing package via Canada Post Registered Mail on March 13, 2018. The tenants stated that the submitted documentary evidence was also submitted with the Canada Post Registered Mail on March 13, 2018. The landlord disputed that no documentary evidence was provided. The landlord confirmed that no documentary evidence was provided.

I find on a balance of probabilities that the tenants did not serve the landlord with the submitted documentary evidence as claimed. Although the tenants provided affirmed testimony confirming service with the notice of hearing package, the landlord disputed this claim. In the absence of any supporting evidence, I find that the tenants did not serve the submitted documentary evidence as per section 88 of the Act. As such, the tenants' documentary evidence shall be excluded from consideration in this matter.

Both parties are also deemed properly served with the notice of hearing package as per section 89 of the Act as both parties provided undisputed affirmed testimony in this regard.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 Month Notice?

Are the tenants entitled to recovery of the filing fee?

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.

Both parties confirmed in their direct testimony that the landlord served the tenants with a 2 month notice dated February 25, 2018 by posting it to the rental unit door on February 25, 2018. The 2 month notice provides for an effective end of tenancy date of April 30, 2018 and one reason selected by the landlord.

The rental unit will be occupied by the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

In this case, the landlord stated that the rental unit will be occupied by her son, who has recently moved home from boarding school approximately 6 months ago. The landlord stated that her current 2 bedroom home is occupied by herself, her spouse, her daughter and son.

The tenants claim that the landlord is being dishonest and question the landlord's good faith in having the rental unit occupied by her son. The tenants stated that they have been previously served with two notices to end tenancy for landlord's use.

October 23, 2017     The rental unit will be occupied by the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

All the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this notice because the purchaser or a close family member intends to occupy the rental unit.

December 26, 2017     The rental unit will be occupied by the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The tenants clarified that both notices were set aside and cancelled in a previous hearing. The landlord confirmed this in her direct testimony.

### 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.

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 submit any evidence. 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.

In this case, both parties have confirmed that the landlord had previously served the tenants with two notice(s) dated October 23, 2017 and December 26, 2017 for Landlord’s Use of Property. In those two notices the same reason for the notice was

selected and an additional regarding the sale of the rental unit. In the previous hearing involving both those notice(s), they were cancelled.

I find that the landlord has failed to provide sufficient evidence to support her claim that her son will occupy the rental unit as claimed. I note that the first 2 month notice included a reason for sale that the landlord failed to provide an explanation.

The 2 month notice dated February 25, 2018 is set aside and cancelled. The tenancy shall continue.

The tenants have been successful in their application and I order the recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenants to withhold one-time \$100.00 from the monthly rent upon receipt of this decision.

### Conclusion

The tenants' application is granted. The 2 month notice dated February 25, 2018 is cancelled.

The tenants are also entitled to recovery of the \$100.00 filing fee as noted above.

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 30, 2018

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Residential Tenancy Branch