



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end the tenancy effective to end the tenancy?

Was the notice to end the tenancy issued in good faith?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: The tenancy under written agreement started on June 1, 2017 for a fixed term to end May 31, 2018. Rent of \$1,050.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$525.00 as a security deposit and \$525.00 as a pet deposit. On March 12, 2018 the Tenants received in the mail a two month notice to end tenancy for landlord’s use (the “Notice”). The Notice is not dated and sets out the stated reason for the Notice that the Landlord or a close family member of the Landlord intends to occupy the unit. The Notice sets out an effective move-out date of May 31, 2018.

The Landlord states that the unit will be used by themselves and other guests. The Landlord clarifies that the other guests will only be visiting while the Landlord occupies the unit. The Landlord states that although it did not date the Notice by the area provided for such a date the Landlord did set out the date by the service details of the Notice. The Landlord states that the missing date of the Notice was an honest error.

The Tenant states that they have no idea when the Notice was issued or should have been dated, that they don't know when it was signed and that they have no basis upon which they could know the date when the Notice was signed or issued. The Tenant states that they do not believe the Landlord has an intention to occupy the unit as the Landlord had asked the Tenant when they would be moving out as the Landlord wanted to let guests know when the unit could be used by their guests. The Tenant states that the Landlord resides in another location in the province and the Tenant believes that the Landlord will not be the sole occupant of the unit. The Landlord states that they did have plans for guests but that those guests would only be in the unit while the Landlord was in the unit.

The Tenant states that after serving the Notice the Landlord told the Tenants that the Landlord would be agreeable to extending the tenancy but only if the Tenants signed another fixed term agreement. The Landlord states that this was offered to the Tenants as the Landlord felt that as most of the summer would be gone before the matter was concluded the Landlord may as well be more flexible and offer a 6 month or 12 month tenancy.

### Analysis

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must, inter alia, be signed and dated by the landlord or tenant giving the notice. Section 68(1) of the Act provides that if a notice to end a tenancy does not comply with section 52 the notice may be amended if the person receiving the notice knew, or should have known, the information that was omitted from the notice,

and in the circumstances, it is reasonable to amend the notice. Given the Tenants' evidence that it did not and could not know the date the Landlord signed and issued the Notice I find that the Notice may not be amended to correct the defect. As the Notice is not dated I find that the Notice does not comply with the Act and that the Notice is not effective to end the tenancy. The tenancy therefore continues. The Landlord remains at liberty to issue an effective notice to end tenancy for landlord's use.

Section 49(3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. As the Notice has been found to be ineffective for ending the tenancy I decline to make any findings with respect to whether or not the Landlord issued the Notice in good faith. As the Tenants' application has had merit I find that the Tenants are entitled to recovery of the \$100.00 filing fee and the Tenants may deduct this from future rent payable in full satisfaction of the claim.

### Conclusion

The Notice is not effective to end the tenancy and the tenancy therefore continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims 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: June 06, 2018

---

Residential Tenancy Branch