



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

On April 30, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting the following relief:

- to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property dated April 17, 2018.
- to recover the filing fee for the Application.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Issues

The Landlord testified that he did not provide a copy of a digital video file to the Tenant prior to the hearing because he was not able to put it on a memory stick and send it.

The Tenant did not object to the video file being received into evidence.

### Issues to be Decided

- Is there cause to end the tenancy based on the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated April 17, 2018?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on September 1, 2016, as a one year fixed term tenancy that continued thereafter as a month to month tenancy. Rent in the amount of \$1,450.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlords a \$700.00 security deposit and a \$700.00 pet damage deposit.

The Tenant testified that he received a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated April 17, 2018 ("the 2 Month Notice").

The 2 Month Notice contains one reason for ending the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the 2 Month Notice by applying for Dispute Resolution within the required timeframe.

The burden to support the reason to end the tenancy rests with the Landlord. The Landlord testified that her husband's parents are selling their home and are moving into the rental unit. She submitted that the situation fits their parents' needs because they don't want to sign a lease and be tied down to a tenancy. She submitted that they have not sold their property yet, but they intend to move into the rental unit on July 1, 2018.

The Tenant submitted that the Landlords did not issue the 2 Month Notice in good faith. He submitted that the Landlords signed the 2 Month Notice on April 17, 2018; however, they were still under contract with a realtor to sell the rental unit and the contract did not expire until May 31, 2018. The Tenant submitted that the Landlords continued to permit showings of the unit after the 2 Month Notice was served. The Tenant testified that there were eleven showings of the rental unit between April 17, 2018, and May 31, 2018.

In response, the Landlords acknowledged that they continued to accept showings for the rental property between April 17, 2018, and May 31, 2018. They submitted that if the property would have sold the rental property during that period of time, they would have cancelled the 2 Month Notice they issued and they would have assisted their parents with other arrangements.

The Tenant submitted that the Landlords' plans were ambiguous, because they were still trying to sell the unit and their parents could not know whether or not they would be moving into the unit.

The Tenant submitted that the Landlord may have an ulterior motive to make the selling the house easier. The Tenant submitted that the Landlord sent him an email stating that the rental unit was in a messy condition during a showing and asked that it be cleaned more thoroughly.

The Landlord submitted that regardless of when her in-laws sell their house, their intention is to move into the rental unit on July 1, 2018.

### Analysis

Residential Tenancy Policy Guideline # 2 Ending a Tenancy: Landlord's Use of Property addresses the requirements for ending a tenancy for landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit.

The Guideline explains the concept of good faith:

*"Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement."*

...

*"If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy."*

*If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy."*

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I have considered whether or not the Landlord had an intention to defraud, act dishonestly, or avoid obligations under the Act or tenancy agreement. I find that at the time the 2 Month Notice was issued, the Landlord did not have the full intention for parents to move into the rental unit. The Landlord continued to permit showings of the unit for the purpose of sale and testified that if the house had sold, the Landlord would have cancelled the 2 Month Notice and made arrangements with the parents to live elsewhere.

The Landlord's explanation is problematic because of their obligations under the Act. The Landlord must truly intend to use the unit for the stated purpose within the Notice. There is no right to unilaterally withdraw a Notice to end tenancy. Once a notice to end tenancy is issued, a Landlord or Tenant cannot unilaterally withdraw a notice. Only with the consent of the party to whom it is given, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date.

I find that at the time the 2 Month Notice was issued the Landlords were still trying to sell the rental property and they believed that they could keep their options open regarding whether or not the rental unit would actually be occupied by the Landlord's parents.

I find that the Landlord did not issue the 2 Month Notice in good faith. The 2 Month Notice To End Tenancy For Landlord's Use Of Property dated April 17, 2018, is set aside.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenants were successful with their application. I authorize the Tenants to deduct the amount of \$100.00 from one future rent payment.

The tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenants' application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated April 17, 2018, is successful. The Tenants are authorized to deduct \$100.00 from one future rent payment.

The tenancy will continue until ended in accordance with the Act.

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 26, 2018

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Residential Tenancy Branch