



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL FFL CNL LAT LRE MT OLC FFT

### Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice pursuant to section 49;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The phone lines were left open for the party to call in to the teleconference for the full duration of the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord CP primarily spoke on behalf of both co-landlords (the "landlord").

The landlord testified that they served the 2 Month Notice dated August 15, 2018 on that date by putting a copy in the tenants' mailbox. The landlord provided a video recording showing the 2 Month Notice being dropped off as evidence of service. I accept the undisputed evidence of the landlord and find that the 2 Month Notice was deemed served in accordance with sections 88 and 90 of the Act on August 18, 2018, three days after being left in the mailbox.

The landlord testified that they served their application for dispute resolution dated September 22, 2018 and the evidence by sending to the tenants by registered mail on September 28, 2018. The landlords provided two Canada Post tracking numbers as evidence of service on each of the tenants. Based on the undisputed evidence I find that the tenants were each deemed served with the landlord's package in accordance with sections 88, 89 and 90 of the Act on October 2, 2018, five days after mailing.

#### Issue(s) to be Decided

Are the tenants entitled to any of the relief applied for?

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to recover the filing fee for their application?

#### Background and Evidence

The landlords gave undisputed evidence of the following facts. This fixed-term tenancy began on August 1, 2017 and is scheduled to end on August 1, 2019. The monthly rent is \$1,400.00 payable on the first of each month. A security deposit of \$500.00 was collected and is still held by the landlords.

A copy of the tenancy agreement was submitted into evidence. The tenancy agreement submitted into evidence shows that this tenancy starts on August 1, 2017 and goes on for a fixed length of time until ending on August 1, 2019.

The landlord said they issued a 2 Month Notice on August 15, 2018. A copy of the 2 Month Notice was provided into evidence. The 2 Month Notice indicates the reason for this tenancy to end is that the rental unit will be occupied by the landlord or the landlord's close family member.

The landlord also testified about various issues they had with the tenants' behaviour and conduct during the tenancy.

### Analysis

The tenants did not attend the hearing which was scheduled by conference call at 11:00am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the tenants' entire application without leave to reapply.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 49(2) of the *Act* provides that:

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

**(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy,**

I find that the reason provided on the 2 Month Notice for this tenancy to end, that the rental unit will be occupied by the landlord or the landlord's close family member, to be a purpose set out in section 49(3).

I find, based on the evidence that this is a fixed-term tenancy. As such, pursuant to section 49(2)(a)(iii) of the Act, the landlord may not end the tenancy on a date earlier than that specified as the end of the tenancy. I find that the 2 Month Notice provides an end of tenancy date earlier than that specified and is thus invalid. Therefore, I find that the 2 Month Notice is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

While the landlord gave evidence regarding the tenants' conduct including their repeated late payment of rent and keeping pets without authorization, I find that these factors are irrelevant to the issuance of a 2 Month Notice.

As the landlord's application was unsuccessful I decline to issue an order allowing recovery of the filing fee.

### Conclusion

The tenants' application is dismissed without leave to reapply.

The landlords' application is dismissed without leave to reapply.

The 2 Month Notice is cancelled and of no force or effect. This tenancy continues 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: October 26, 2018

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Residential Tenancy Branch