



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **Landlord:**    OPL, OPN, FFL  
                                 **Tenants:**     CNL, FFT

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession based on the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to sections 49 and 55;
- an Order of Possession based on written notice to end the tenancy from the tenants pursuant to sections 45 and 55;
- authorization to recover the filing fee for this application from the tenants.

The tenants sought:

- cancellation of the landlord's Two Month Notice pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord.

The landlord did not attend this hearing, although I waited until 9:42 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 9:30 a.m.

Tenant B.H. attended the hearing and was given a full opportunity to be heard, to present their sworn testimony and to make submissions. Tenant B.H. (the tenant) indicated that he was representing the interests of both tenants.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

**Commencement of the hearing** - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The tenant testified that the Tenants' Application for Dispute Resolution (the Tenants' Application) and an evidentiary package were sent to the landlord by way of registered mail on August 15, 2018. The tenant provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was deemed served with the Application and the tenants' evidentiary package on August 20, 2018, the fifth day after its registered mailing.

The tenant acknowledged receipt of the Landlord's Application for Dispute Resolution (Landlord's Application) on August 11, 2018. In accordance with section 89 of the *Act*, I find that the tenants are duly served with the Landlord's Application.

The tenant confirmed that they received the Two Month Notice on July 27, 2018, which was sent to them by mail on July 26, 2018. In accordance with section 88 of the *Act*, I find that the tenants are duly served with the Two Month Notice on July 27, 2018.

The tenant gave undisputed affirmed testimony that they did not receive any evidence from the landlord.

#### Issue(s) to be Decided

Should the Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession based on the Two Month Notice?

Is the landlord entitled to an Order of Possession based on the tenants' notice to end tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

The tenant provided written evidence that this tenancy commenced on June 01, 2016, with a monthly rent of \$2,500.00, due on the first day of each month. The landlord confirmed that the landlord retains a security deposit in the amount of \$1,250.00.

A copy of the signed landlord's July 26, 2018, Two Month Notice was also entered into evidence. In the Two Month Notice, requiring the tenant to end this tenancy by September 30, 2018, the landlord cited the following reason:

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

The tenant gave undisputed affirmed testimony that they did not give written notice to end their tenancy and that the landlord has misconstrued the tenant's words in an e-mail that was sent to the landlord.

#### Analysis

Section 45 of the Act allows a tenant to end a tenancy if they give written notice that complies with section 52 of the Act, which requires the notice to be signed and dated among other required content.

Section 49 of the Act allows a landlord to end a tenancy if their close family member is going to occupy the rental unit. Section 49 of the Act provides that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Two Month Notice was issued to the tenant in good faith and that the landlord truly intends on doing what they said they would do on the Two Month Notice.

As the tenant disputed this notice on August 10, 2018, and since I have found that the Two Month Notice was served to the tenants on July 27, 2018, I find that the tenants have applied to dispute the Two Month Notice within the time frame provided by section 49 of the Act.

I find that the landlord bears the burden to prove that they have sufficient grounds to end the tenancy under sections 45 or 49 of the Act.

Accordingly, **in the absence of any evidence or submissions from the landlord, I order the Landlord's Application dismissed in its entirety, without liberty to reapply.**

I find that the landlord has failed to prove the Two Month Notice was issued to the tenants in good faith.

As the landlord has not proven that they have issued the Two Month Notice to the tenants in good faith, I find that the tenants are successful in their Tenants' Application and the Two Month Notice dated July 26, 2018, is set aside and of no force or effect.

This tenancy will continue until ended in accordance with the *Act*.

As the tenants have been successful in this application, I allow them to recover their filing fee from the landlord.

#### Conclusion

The Two Month Notice dated July 26, 2018, is cancelled and of no force or effect.

This tenancy will continue until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I order that the tenants may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of \$100.00, to recover the filing fee for this application.

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: September 20, 2018

---

Residential Tenancy Branch