



# 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 receipt of the notice of hearing package. The tenants stated that a late evidence package submitted on November 4, 2018 was not provided to the landlord. The landlord stated the photographs submitted by the landlord were not provided to the tenants. Neither party raised any service issues. As such, I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package on October 16, 2018. On the issue of the lack of service regarding the tenants' late evidence and the landlord's photographs, I find that both parties in this regard have failed to comply with the service provisions regarding evidence. As such, these items not served as excluded from consideration in this hearing and decision.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 month notice for landlord's use?  
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.

This tenancy began on March 15, 2017 on a fixed term ending on March 14, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated March 3, 2017. The monthly rent is \$1,700.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$875.00 was paid.

Both parties confirmed that the landlord served the tenants with a 2 month notice dated September 14, 2018 in person on September 14, 2018 and that it sets out an effective end of tenancy date of November 30, 2018 and the reason selected as:

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

The tenants seek an order cancelling the 2 month notice as they state,

The notice was given in preposition that the landlord was getting sued for the townhouse. But no landlord use of Property was stated.

[Reproduced as written]

During the hearing the tenants described their dispute in that the landlord was "getting a court case", but has not clarified how this would impact the reason for the 2 month notice. The tenants then clarified that they were in fact claiming that the landlord had cancelled the 2 month notice and extended the tenancy. The landlord disputed this claim stating that at no time has the 2 month notice been cancelled. The tenants have referred to an audio file submitted (2018-09-1711-06-46).

### 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.

Both parties confirmed that the tenants were served with the 2 month notice dated September 14, 2018 by the landlord in person on September 14, 2018. In this case, the

tenants had initially argued that the 2 month notice was not valid, because the landlord was “getting a court case”, however the tenants were unable to clarify the details of how this would impact the reason for the notice. The tenants then clarified that they were seeing a cancellation of the notice as the landlord had verbally promised to cancel it. The landlord disputed this claim. The tenants referred to a submitted audio file as confirmation. A review of the approximately 10 minute audio file showed an extended conversation between the two parties regarding the tenants’ request to extend the end of tenancy date. Numerous references were made by the landlord that the tenants’ did not have anything to worry about and stated, “I give you the notice, but we will take care of it”. During the review, at no time did I hear the landlord “cancel” the notice. On this basis, I find that the tenants have failed to establish a claim to cancel the 2 month notice. A review of the 2 month notice shows that it complies with section 52 of the Act for form and content. The tenants have failed to provide sufficient evidence that the landlord cancelled the 2 month notice. As such, the tenants’ application to cancel the 2 month notice is dismissed.

Pursuant to section 55 of the Act, the landlord is entitled to an order of possession for the effective date of the notice of November 30, 2018.

### Conclusion

The tenants’ application is dismissed.  
The landlord is granted an order of possession.

The tenants must be served with the order of possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: November 09, 2018

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Residential Tenancy Branch