



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing was scheduled in response to the tenant's 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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on August 4, 2018 on a fixed term until November 30, 2018 at which time the tenant was required to vacate to allow the landlord or close family member of the landlord to occupy the rental unit. Rent in the amount of \$1,300.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$650.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The tenant contended that the landlord had intentions to rent the unit through the Christmas holidays, which is contrary to the vacate clause in their tenancy agreement. The tenant alleged the landlord and tenant entered into discussions which led her to believe the tenancy could extend past November 30, 2018. On November 29, 2018 the tenant advised the landlord she would not be vacating the unit.

The landlord testified that the self-contained unit is located in the landlord's primary residence and she plans to use it as playroom and guest quarters for visiting family. The landlord acknowledged that there was some discussion of a New Year's rental however because this did not meet the landlord's needs, it did not materialize. The landlord maintained that she did not commit to extend the tenancy beyond the date specified in the signed tenancy agreement and as such the tenant should have vacated November 30, 2018. Upon notification that the tenant did not plan to vacate pursuant to the signed tenancy agreement, the landlord issued the 2 Month Notice, indicating that the rental unit will be occupied by the landlord or the landlord's close family member. The notice indicates an effective move-out date of January 31, 2019. The landlord testified that the notice was only issued to ensure the landlord obtained possession of the unit.

### Analysis

Section 44 of the *Act* and 13.1 of the *Residential Tenancy Regulation* ("*Regulation*") establishes that a tenancy may end if the tenancy agreement contains a vacate clause requiring the tenant to vacate the rental unit at the end of the fixed term if that landlord is an individual, and that landlord or close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish they truly intended to do what they said on the tenancy agreement. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy. In this case, the landlord's testimony has persuaded me on the balance of probabilities that at the time of entering into the tenancy agreement, the landlord intended to use the unit for her own use.

The tenant raised the issue of waiver. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel. I find the tenant failed to prove her claim that the landlord waived the vacate clause of the tenancy agreement. I find the discussions the tenant

has referred to do not negate the validity of the existing signed tenancy agreement nor are they evidence that the tenancy was to continue past November 30, 2018. As evidenced by the tenant's own testimony, the tenant was aware prior to the effective vacate date of the landlord's intention to end the tenancy November 30, 2018. The landlord crystalized this intent by issuing a 2 Month Notice on November 29, 2018.

Policy Guideline 30 provides that a tenancy agreement with a vacate clause must include the reason for the clause and contain both parties initials. Based on the parties' testimony and the tenancy agreement before me, I am satisfied the tenancy agreement complies in form and content. Therefore I find the landlord was entitled to possession of the rental unit on November 30, 2018 and as this has not occurred, the landlord is entitled to a two day order of possession for the rental unit.

As such, I find the landlord was not required to issue a 2 Month Notice and therefore set this notice aside. The 2 Month Notice issued on November 29, 2018 is of no force or effect. The tenancy ends on the basis of the vacate clause in the signed tenancy agreement.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee.

### Conclusion

The 2 Month Notice is set aside and is of no force or effect.

I grant an order of possession to the landlord effective **two (2) days after service on the tenant** on the basis of the vacate clause in the signed tenancy agreement.

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: January 07, 2019

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Residential Tenancy Branch