



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, OLC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 9, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated December 31, 2018;
- an order for the Landlord to comply with the *Act*, regulation and/or tenancy agreement; and
- an order granting the return of the filing fee.

The Tenants and the Landlord L.C. attended the hearing, each providing affirmed testimony.

The Tenants testified that they served the Application package as well as documentary evidence to the Landlords by registered mail on January 10, 2019. L.C. confirmed receipt. L.C. stated that she served the Landlords' documentary evidence onto the Tenants in person on February 14, 2019. The Tenant confirmed receipt.

No issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, I find the above documents were sufficiently served pursuant to Sections 88 and 89 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act* (*Act*) requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy

issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Preliminary and Procedural Matters

The Tenants submitted an amendment to their Application on January 11, 2019 requesting a correction be made to remove the backslash between the Landlords' names. Also, the Tenants were seeking to remove the middle initial C and replace it with the Tenant's full middle name. The parties agreed to the above mentioned amendments.

### Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated December 31, 2018, pursuant to Section 49 of the *Act*?
2. Are the Tenants entitled to an order for the Landlord to comply with the *Act*, regulation and/or tenancy agreement, pursuant to Section 62 of the *Act*?
3. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
4. If the Tenants are not successful in cancelling the Two Month Notice, are the Landlords entitled to an Order of Possession, pursuant to section 55 of the *Act*?

### Background and Evidence

The parties agreed that the tenancy began on August 1, 2008, that currently rent in the amount of \$1,425.00 is due to be paid to the Landlord on the first day of each month, and that a security deposit in the amount of \$712.50 was paid to the Landlord. Neither party submitted a copy of the tenancy agreement.

L.C. testified that she served the Tenants in person with the Two Month Notice on December 31, 2018, with an effective vacancy date of March 1, 2019. The Tenants confirmed having received the Two Month Notice on the same day. The Landlord's reason for ending the tenancy on the Two Month Notice is;

*"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)."*

L.C. testified that she served the Two Month Notice to the Tenants as her aging parents who currently live next door to the rental unit are needing to relocate to a wheelchair accessible residence as L.C.'s father has difficulties walking and requires the use of a wheelchair. Currently L.C.'s father is faced with having to use stairs to gain entry to his residence. L.C. stated that her father has fallen on several occasions and that she is growing increasingly concerned for his well-being. L.C. stated that her parents intend on occupying the main floor of the residence which is currently being occupied by the Tenants as it is wheelchair accessible.

For these reasons, the Landlords are seeking the Tenants to vacate the rental unit on March 1, 2019, so that L.C.'s parents can move in. L.C. testified that the Tenants currently have a pet in the rental unit, which her father is allergic to. As a result, L.C. stated that she will have to deep clean the unit and have the carpets washed to remove stains. L.C. testified that it could be that she replaces the carpet given it's age and use. Furthermore, L.C. stated that she may paint the unit as well as change some wiring in the kitchen.

In response, the Tenants indicated that they feel as though the Landlords have indicated to them that they are seeking to complete some re-wiring of the house which will require the power to be shut off to the house, making it uninhabitable. For these reasons, the Tenants have applied to have the Two Month Notice cancelled as they feel as though a Four Month Notice for Landlord's Use would be more appropriate given the extent of the work they feel will take place and would like the Landlords to comply with the Act with respect to issuing the proper notice. The Tenants submitted a text message conversation between the parties which indicates that there was a discussion about wiring.

L.C. responded and testified that the re-wiring is merely a change of a few wires in the kitchen area as the current wiring has been problematic in the past, causing the breaker to trip on occasion.

### Analysis

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. L.C. stated that her parents intend to occupy the Tenants' rental unit.

The Landlords served the Tenants in person with the Two Month Notice on December 31, 2018, with an effective vacancy date of March 1, 2019. The Tenants confirmed having received the notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days

after the date the Tenant receives the notice. The Tenants received the Two Month Notice on December 31, 2018, and filed their Application on January 9, 2019. Therefore, the Tenants are within the 15 day time limit under the *Act*.

L.C. testified that her parents intend to move into the rental unit as soon as the unit is vacant and cleaned. L.C. also indicated that the Landlords would like to perform some minor repairs to the unit such as painting and potentially new carpet, as well as some re wiring in the kitchen prior to her parents moving in. L.C. indicated that the reason that her parents are moving in is that the rental unit is wheelchair accessible for her aging father who is having difficulties walking and requires the use of a wheelchair.

The Tenants did not dispute that L.C.'s parents intends to move in, instead focused their reasons for wanting the Two Month Notice cancelled on the basis that the Landlords' intend on doing renovations to the unit which would require a Four Month Notice for Landlord's use to be served on the Tenants rather than the Two Month Notice they received.

In this case, I find both parties agree that L.C.'s parents intend on occupying the rental unit in good faith. L.C. testified that they wish to complete some minor repairs to the rental unit prior to L.C.'s parents moving in.

According to the Residential Tenancy Policy Guideline #2 (the "Policy Guidelines"); there are three requirements to end a tenancy for renovations or repairs:

1. The landlord must have the necessary permits;
2. The landlord must intend, in good faith, to renovate the rental unit; and
3. The renovations or repairs require the rental unit to be vacant.

In order for the third requirement to be met:

- a) the renovations or repairs must be so extensive that they require the unit to be empty in order for them to take place; and
- b) the only way to achieve this necessary emptiness or vacancy must be by terminating the tenancy.

I find insufficient evidence to demonstrate that the extent of the renovations or repairs are so extensive that they require the unit to be empty in order for them to take place and therefore I do not find that these minor and cosmetic repairs merit a Four Month Notice to End Tenancy for Landlord's Use.

In light of the above, I find that the Landlords have complied with the *Act* and were justified in serving the Tenants with the Two Month Notice. As a result, I dismiss the

Tenants Application to cancel the Two Month Notice dated December 31, 2018, without leave to reapply.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective on March, 1 2019, at 1:00PM, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

As the Tenants were not successful with their Application the Tenants are not entitled to recover the filing fee from the Landlords.

### Conclusion

The Tenants' Application seeking the cancellation of the Two Month Notice dated December 31, 2018, is dismissed without leave to reapply. The Landlords are granted an order of possession effective on March 1, 2019 at 1:00PM. The order should be served onto the Tenants as soon as possible and may be filed in the Supreme Court 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: February 27, 2019

---

Residential Tenancy Branch