



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MT, CNL, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. 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 of Property, undated (“2 Month Notice”), pursuant to section 66;
- cancellation of the landlord’s 2 Month Notice, pursuant to section 49; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 11 minutes. The two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The male tenant confirmed that the female tenant had permission to represent him at this hearing.

The male tenant testified that he personally served the landlord with the tenants’ application for dispute resolution hearing package on April 1, 2019. The female tenant confirmed that she witnessed this service. In accordance with section 89 of the *Act*, I find that the landlord was personally served with the tenants’ application on April 1, 2019.

The female tenant confirmed that she received the landlord’s 2 Month Notice on January 31, 2019. The effective move-out date on the notice is March 31, 2019. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord’s 2 Month Notice on January 31, 2019.

The female tenant confirmed that she and the male tenant attended a previous RTB hearing before me on March 28, 2019, after which a decision of the same date was issued. In that decision, I dismissed the tenants' application to cancel the same 2 Month Notice, with leave to reapply, as they failed to serve the landlord with their application using an approved service method under section 89 of the *Act*. The file number for that hearing appears on the front page of this decision.

### Issues to be Decided

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

### Analysis

In accordance with section 49(8)(a) of the *Act*, the tenants must file their application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenants received the 2 Month Notice on January 31, 2019 and filed their original application to dispute it on February 14, 2019. However, I was required to dismiss that application with leave to reapply because the tenants posted their application to the landlord's door, rather than using an approved method of service under section 89 of the *Act*. The tenants filed this second application to dispute the 2 Month Notice on April 1, 2019 and served it correctly as per section 89 of the *Act*, to the landlord in person.

Accordingly, I find that the tenants' application was filed within the fifteen day time limit under the *Act*, as their original application was made in time and I dismissed that application for service, not any merit-based issues. Therefore, I find that the tenants do not require more time to dispute the 2 Month Notice and this portion of their application is dismissed without leave to reapply.

Where tenants apply to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the 2 Month Notice is based. The landlord did not appear at this hearing. The landlord did not meet his onus of proof.

Therefore, as advised to the tenants during the hearing, the landlord's 2 Month Notice, undated, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the *Act*. This tenancy will continue until it is ended in accordance with the *Act*.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I allow the tenants' application to cancel the landlord's 2 Month Notice. The landlord's 2 Month Notice, undated, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the *Act*.

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

I order the tenants to deduct \$100.00 from their future monthly rent payable to the landlord for this rental unit and this tenancy, in satisfaction of the monetary award for the filing fee.

The tenants' application for more time to make an application to cancel the landlord's 2 Month Notice is dismissed without leave to reapply.

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: April 30, 2019

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Residential Tenancy Branch