



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, OLC, FFT

### 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;
- an order requiring the landlords 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 landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenants confirmed that they received the landlords' 2 Month Notice sent by the landlords by registered mail on February 14, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlords confirmed that they received copies of the tenants' dispute resolution hearing package sent by the tenants by registered mail on March 2, 2019, I find that the landlords were duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This tenancy for a three bedroom home began on October 1, 2012. The monthly rent as of July 1, 2018 is \$ 1,455.00, payable in advance on the first of each month. The landlords continue to hold the tenants \$700.00 security deposit paid when this tenancy began. The tenants gave undisputed sworn testimony that they had attempted to pay the landlords monthly rent for April 2019, but the landlords had refused this payment as the landlords believed that this tenancy will be ending by May 1, 2019, and the tenants are not required to pay rent for the last month of their tenancy after having received the landlords' 2 Month Notice.

The landlords' 2 Month Notice identified the following reason for ending this tenancy by May 1, 2019:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

Landlord DaZ (the landlord) wrote on the 2 Month Notice that they intended to move into the rental unit with their children.. At the hearing, DaZ and their spouse, Landlord DoZ testified that they had separated in September 2018 and that DaZ needed to relocate closer to his work and with a much larger living area than DaZ currently had in rented accommodation at some distance from his workplace.

In their written evidence and in sworn testimony from Tenant AB (the tenant), the tenants questioned the good faith of the landlords in seeking an end to this tenancy for landlord's use of the property. The tenants' written submission raised concerns that the 2 Month Notice was the fifth notice to end tenancy issued against the tenants for this tenancy since the tenants objected to what the tenants considered to be an illegal attempt by the landlords to raise their rent. Since that time and within what the tenants claimed was less than a three month period, the landlords have issued five separate

notices to end tenancy. Three of these notices to end tenancy were dismissed in an Interim Decision of another arbitrator appointed pursuant to the *Act* on January 16, 2019 (referenced above). In that arbitrator's final decision of March 4, 2019 on matters raised in applications initiated by both parties, the arbitrator described the three notices to end tenancy that were before them and which were set aside as follows:

*The Tenants' application to set aside the One Month Notice to End Tenancy for Cause that was served on November 27, 2018; the Tenants' application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent that was served on December 04, 2018; and the Tenants' application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent that was served on January 01, 2019 were addressed in my interim decision of January 16, 2019.*

That arbitrator dismissed each of these three notices.

The landlord's fourth notice to end tenancy involving another 1 Month Notice issued on February 5, 2019 was also set aside in a decision of another arbitrator appointed pursuant to the *Act* in a decision of March 22, 2019.

Even before the tenants' application to cancel the second 1 Month Notice had been heard, the landlords issued a different notice to end tenancy, this time a 2 Month Notice for the reasons cited above.

The tenants' claim that this Notice was not issued in good faith included their claim that the landlords had listed the rental property for sale, and have continued to show the property to prospective purchasers before and after the landlords issued their 2 Month Notice.

On this point, the landlord confirmed that the property was listed for sale at one point. At the hearing, the landlord could not initially recall when it was listed, but agreed that there was still a "For Sale" sign on the lawn of the rental home. The landlord confirmed, that the house was still listed for sale, that showings of the house were being arranged as the tenants claimed before and after the 2 Month Notice was issued and that, in fact, showings are still occurring even this week. The landlord said that the landlords were uncertain when the landlord initially separated as to whether this would be a permanent separation or if there existed the possibility of getting back together as a couple. When the property was listed for sale, which the landlord later estimated happened at the end of January 2019, the landlords were hopeful to sell the rental property as part of a

separation of their joint assets. However, when their realtor advised them of the drop in the current market for such properties, the couple decided that it made more sense for the landlord to end his tenancy in another community, and take possession of the rental unit, which would provide more space to enable his children to reside there with him on a shared custody basis. In support of the landlord's claim that he truly intended to reside in the rental home once the tenants vacated, the landlord entered into written evidence an unsigned March 27, 2019 letter to their current landlord in which the landlord gave his written notice to end his existing tenancy by April 30, 2019 so that he could live in the home currently occupied by the tenants in this application. Landlord DoZ testified that they had spoken with their realtor and the realtor was planning to discontinue showings of the property the week after this hearing. The landlords testified that the realtor was reluctant to become involved in the dispute between the landlords and the tenants and had declined providing anything to confirm their discussions regarding the listing of the property.

The tenants gave undisputed sworn testimony that they had been notified of showings as recently as Wednesday, April 10, two days before this hearing, as well as on the weekend following this hearing.

The landlords also entered into written evidence a copy of a February 11, 2019 email in which Landlord DoZ notified the tenants that they could expect to receive the 2 Month Notice in the coming days. In addition to advising the tenants of the reasons they were doing so, Landlord DoZ indicated in their email the following:

*...We are still considering keeping the house on the market, if the price is right, but slowly going to fix issues and cleaning up the house and yard to hopefully sell in the near future, so that our children can attend college, which only benefits their future...*

### Analysis

While I have turned my mind to all the documentary evidence, including photographs, audio and video recordings, miscellaneous letters, texts and e-mails, replete with handwritten comments and observations included in the margins of the other parties' submissions, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' application and my findings around each are set out below.

During the hearing and in their written evidence, both parties had difficulty in focussing their comments and observations on the matter properly before me, the 2 Month Notice.

Given that there have been dispute resolution hearings over the past few months, and that two decisions have been issued by other arbitrators regarding the landlords' previous notices to end tenancy within the past month, it was not altogether surprising that the parties had difficulty separating these issues from one another. However, to the extent that the tenants were calling into question the good faith of the landlords in issuing the 2 Month Notice, some of this evidence was likely relevant to the landlords' motivations in issuing this fifth notice to end this tenancy since November 27, 2018. In accordance with subsection 49(8) of the *Act*, the tenant must file their application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenants filed their application for dispute resolution on February 28, 2019, well within the fifteen day limit provided for under the *Act*. Once this happened, the onus transfers to the landlord to prove, on a balance of probabilities, the validity of ending the tenancy for the reason stated in the 2 Month Notice.

Section 49(3) of the *Act* establishes the grounds by which " a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

*Residential Tenancy Policy Guideline 2* provides the following description of the burden of proof the landlord must meet when a tenant raises concerns about the extent to which the landlord has issued the 2 Month Notice in good faith:

*...If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy...*

In this case, I must take into consideration that the landlords have attempted on four separate occasions between November 27, 2018 and February 13, 2019 to end this tenancy for reasons other than the landlords' current 2 Month Notice. I note that all of these notices to end tenancy were issued after the landlords separated in September 2018. By the time of their issuance of the 2 Month Notice, the landlords would have received the arbitrator's Interim Decision of January 16, 2019, in which that arbitrator set aside the first three of the landlords' notices to end tenancy. Following their receipt of that Interim Decision, the landlords apparently contacted a realtor to list the rental property for sale, a process that involved placing a "For Sale" on the lawn and required the tenants' co-operation in making their residence available for viewings by prospective purchasers. Between the time when they listed the property for sale and their issuance

of the 2 Month Notice, the landlords issued their fourth notice to end tenancy on February 5, 2019, a second 1 Month Notice to End Tenancy for cause. Since the tenants promptly applied to cancel the 1 Month Notice the following day, it is quite likely that the landlords would have been served with the tenants' application to cancel that Notice before they issued the 2 Month Notice currently before me.

I should first not that it is difficult to overlook this extensive recent history of notices to end tenancy issued by the landlords, all of which have been set aside by arbitrators appointed pursuant to the *Act*. Nevertheless, this does not necessarily mean that the landlords are not acting in good faith with respect to their current 2 Month Notice. In that regard, the landlords have entered into written evidence an unsigned March 27, 2019 document which the landlord maintains was the written notice to end tenancy to his current landlord to take effect on April 30, 2019. This time frame was apparently meant to coincide with the May 1, 2019 effective date on the 2 Month Notice. The landlord testified that if the tenants do not vacate the premises as scheduled, the landlord will be left homeless.

While sympathetic to the predicament that the landlord may be facing, I find that other than the March 27, 2019 letter, the landlords have produced very little that would serve to demonstrate their intention to use the tenants' rental home for the purpose stated in the 2 Month Notice. For example, they provided nothing formal to confirm their separation or the date when they separated, the location of where the landlord works, anything from schools, school counsellors or any other confirmation that the landlord has initiated plans to relocate to the tenants' rental home. They provided no confirmation from the landlord's current landlord that his notice to end tenancy has been received and that the landlord is expected to leave that rental accommodation by April 30, 2019, as the landlord claims. They provided nothing from their realtor to confirm that they are poised to take the rental home off of the real estate market. All of this information could have been entered into written evidence or by sworn testimony from others who would be in a position to corroborate the landlords' account of their intentions. I find it somewhat revealing that such little corroborating evidence was submitted by the landlords to support that they were truly acting in good faith.

In fact, by contrast the landlords have provided written evidence that Landlord DoZ sent the tenants an email alert on February 11, 2019 that they could expect to receive a 2 Month Notice less than two weeks after the landlords entered into a real estate listing of this property to seek prospective purchasers. . Had the landlords immediately pulled the "For Sale" from the lawn and removed the real estate listing the day after the 2

Month Notice was issued, the landlords' assertion that the 2 Month Notice was issued in good faith would be far more credible. Rather, the landlords continued to show the property to prospective purchasers, even including two days before this hearing with another showing scheduled for the weekend after this hearing. Other than the landlords' sworn testimony that they intend to have the real estate listing removed the week after this hearing, the landlords have provided no other evidence to confirm that this is so. This also contradicts the February 11, 2019 email from Landlord DoZ in which they noted that the landlords were considering keeping the rental home listed on the real estate market with the hope of finding a buyer willing to pay the right price for this home.

Under these circumstances, I find that the tenants have raised sufficient questions as to the good faith that the landlords have exhibited with respect to the landlords' intention to use the rental unit for the purpose stated on the 2 Month Notice. Once these questions were raised by the tenants, I find that the landlords have failed to meet the burden of proof to establish that the 2 Month Notice was issued in good faith. For these reasons, I allow the tenants' application to cancel the 2 Month Notice.

As the tenants have been successful in their application, I allow them to recover their \$100.00 filing fee from the landlords.

Although the tenants said that they have attempted to pay their April 2019 rent, the landlords apparently refused to accept such payment as they considered the tenants entitled to withhold their rent payment for that month in accordance with section 51(1) of the *Act* after having received the landlords' 2 Month Notice. Since this tenancy is not ending as a result of the 2 Month Notice, the tenants are not entitled to withhold paying rent for April 2019 pursuant to section 51(1) of the *Act*. Under these circumstances and in accordance with the tenants' application pursuant to section 62 of the *Act*, I order that the tenants' rent for April 2019, less any amounts they may deduct as a result of decisions issued by arbitrators appointed pursuant to the *Act*, becomes due on April 19, 2019. I make no other orders with respect to the tenants' application.

### Conclusion

I allow the tenants' application to cancel the 2 Month Notice. The 2 Month Notice is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary award in the tenants' favour in the amount of \$100.00 to recover their filing fee from the landlords. As this tenancy is continuing, I allow the tenants to reduce a future monthly payment by \$100.00.

I order that the tenants' monthly rent for April 2019 less any amounts the tenants may be legally entitled to deduct becomes due on April 19, 2019.

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 12, 2019

---

Residential Tenancy Branch