



# 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 an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on February 22, 2019.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlords to provide their evidence submission first, as the landlords have the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on May 1, 2019.

The reason stated in the Notice was that:

- 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 landlord testified that their brother in law that lives in India; wants to use the rental unit for their relatives children to go to school.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that:

- 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)

In this case, the landlord's evidence does not support the Notice, as the Act only allows the landlord's close family members to occupy the premise, not distant relatives as described. Therefore, I grant the tenant's application to cancel the Notice. **The notice is cancelled and has no force or effect.**

In this case, the tenant may have vacated the premises prior to the hearing, ending their tenancy; however, the landlord does not agree that they have vacated the premises. I find if the tenant has vacated the premise prior to the hearing that was a personal choice of the tenant.

Since the tenant was successful with their application, I find the tenant is entitled to recover the filing fee from the landlords. Therefore, I grant the tenant a monetary order in the amount of **\$100.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

Conclusion

The tenant's application to cancel the Notice is granted. I grant the tenant a monetary order for the cost of filing their application.

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: May 02, 2019

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Residential Tenancy Branch