



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Parker Holdings  
and [tenant name suppressed to protect  
privacy]

## **DECISION**

Dispute Codes      CNL FFT

### Introduction

This hearing dealt with the tenants' application pursuant to section 49 of the *Residential Tenancy Act* (the *Act*) for cancellation of a landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) and to recover their filing fee pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant ABP (the "tenant") primarily spoke on behalf of all named applicants. The corporate landlord was represented by their agent (the "landlord").

As both parties were present service of documents was confirmed. The tenants confirmed receipt of a 2 Month Notice dated December 31, 2019 and the landlord's evidence. The landlord confirmed receipt of the tenant's application for dispute resolution and materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover their filing fee from the landlord?

### Background and Evidence

The parties agree on the following facts. This periodic tenancy began approximately 6 years ago. The current monthly rent is \$2,300.00 payable on the first of each month. The rental unit is a detached home. The landlord presently resides in another property they own down the street.

The parties say that the landlord issued a 2 Month Notice dated December 31, 2019. A copy of the first page of the notice was submitted into evidence. The parties say that the reason provided on the notice for the tenancy to end is that the landlord intends to occupy the rental unit.

The landlord testified that the rental unit is in a state of considerable disrepair and neglect with personal items strewn about the property. The landlord said they intend to occupy the rental unit and perform necessary maintenance, cleaning and repairs.

The tenants dispute the landlord's intention and say that they have discovered an online listing to sell the subject property.

### Analysis

Section 49(8) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch within 15 days of receiving the notice.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

In the present case the parties agree that a 2 Month Notice was served on the tenants on December 31, 2019 and the tenants filed their application to dispute the notice on January 13, 2020. As such, I find that the tenant was within the 15 days provided under the *Act* to file their application.

Neither party submitted the full 2 Month Notice into written evidence. A portion of the 2 Month Notice was submitted and the landlord gave some testimony about the reasons for ending the tenancy. The landlord also submitted some additional documents into evidence such as portions of what appears to be a contract for purchase and sale of a property that is neither the rental property or the address at which the landlord currently resides and an undated condition inspection report signed by one of the tenants. The landlord did not provide testimony as to why they had submitted these documents into evidence nor what they stood for. I find that in the absence of the complete 2 Month

Notice and given the paucity of materials supplied by the landlord, I find there is insufficient evidence to conclude that a proper notice conforming with the form and content requirements of the Act was issued or that the landlord has shown on a balance that there is grounds for this tenancy to end.

I find that the landlord has not met their evidentiary burden. Accordingly, I allow the tenant's application to cancel the 2 Month Notice.

As the tenants were successful in their application they are entitled to recover the filing fee. I allow the tenants to do this by making a one-time deduction of \$100.00 from their next scheduled rent payment.

### Conclusion

The 2 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

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 6, 2020

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Residential Tenancy Branch