



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's use ("the Notice") issued pursuant to section 49; and
- authorization to recover the filing fee for this application pursuant to section 72.

The applicant (tenant LG) called into this teleconference at the date and time set for the hearing of this matter and were given an opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Witness ZY also attended. Although I waited until 11:20 A.M. to enable the respondent (landlord) to connect with this teleconference hearing scheduled for 11:00 A.M, the respondent did not attend. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant, her witness and I were the only persons who had called into this teleconference.

The tenant affirmed she served the Notice of Hearing and evidence (the Materials) by registered mail sent on March 24, 2020 (the tracking number is on the cover page of this decision). I find the landlord was served in accordance with section 89(1)(c) of the Act. The landlord is deemed to have received the Materials on March 29, 2020, in accordance with section 90 (a) of the Act.

### Issues to be Decided

- Are the tenants entitled to cancellation of the Notice?

- Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claim and my findings are set out below.

The tenant affirmed the tenancy started on December 01, 2017, rent is currently \$3,100.00 monthly, due on the first day of the month. The landlord still holds a \$1,450.00 security deposit collected at the outset of the tenancy. A copy of the signed tenancy agreement was provided. The tenant continues to reside at the rental property.

The tenant affirmed she is an employee of "Bank of China (Canada)". Her employer rented the rental unit for her to reside in while working in Canada. The tenancy agreement indicates Bank of China (Canada) as the tenant.

The tenant affirmed the Notice was served in person on February 29, 2020. The effective date of the Notice is April 30, 2020.

A copy of the Notice was provided. The reason to end the tenancy is: "The rental unit will be occupied by the landlord or the landlord's spouse". The Notice is addressed to tenant LG.

The tenant affirmed the landlord is trying to sell the rental unit. The tenant submitted into evidence the rental unit's listing. The tenant affirmed some potential buyers visited the rental unit.

### Analysis

Section 49(8) allows the tenant to challenge the Notice within 15 days. As the Notice was served on February 29, 2020 and the tenant filed on March 12, 2020 the tenant filed this application in time.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid. Furthermore, Policy Guideline 2A states the landlord must demonstrate there is not an ulterior motive for ending the tenancy:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

The landlord did not attend the hearing and did not provide any evidence. Pursuant to Rule of Procedure 6.6 the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a notice to end tenancy.

The Notice is therefore cancelled and of no force or effect. This tenancy will continue until it is lawfully ended in accordance with the *Act*.

As the tenants are successful with their application, pursuant to section 72 of the Act, I authorize them to recover the \$100.00 filing fee. I order that this amount may be deducted from the rent payment due on June 01, 2020.

### Conclusion

The Two Month Notice to End Tenancy for Landlord's use is cancelled and of no force or effect.

Pursuant to section 72(2)(a) the tenants are authorized to deduct \$100.00 from their rent payment due on June 01, 2020 to recover their filing fee.

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 13, 2020

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Residential Tenancy Branch