



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, LRE, FFT

### Introduction

This hearing dealt with the tenants' application for;

- cancellation of the landlord's 2 Month Notice to End for Landlord's Use of the rental property ("2 Month Notice") pursuant to section 49 of the *Act*;
- an order suspending the landlord's right to enter the rental unit pursuant to section 29 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only tenant S.H. attended the hearing. The landlord did not attend this hearing, which lasted approximately 10 minutes. S.H. was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she sent by Canada Post Registered Mail, a copy of the application for dispute resolution hearing package to the landlord on August 15, 2020. The tenant provided the Canada Post tracking number for the package to the hearing. Based on the undisputed testimony of the applicant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with this application on August 20, 2020, five days after it was sent by Registered Mail.

### Issue(s) to be Decided

Can the tenants cancel the notice to end tenancy?  
Should restrictions be placed on the landlord concerning their right to enter the unit?  
Are the tenants entitled to a return of the filing fee?

### Background and Evidence

The tenant explained this tenancy began on March 1, 2020. Rent is \$1,700.00 per month and a security deposit of \$850.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenant said she was seeking to dispute two different 2 Month Notices to End Tenancy ("2 Month Notices".) The first Notice dated July 28, 2020 cited as follows:

*All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

A second noticed dated July 30, 2020 was served on the tenants and cited the following reasons for its issuance:

*The rental unit will be occupied by the landlord or the landlord's close family members (parents, spouse or child; or the parent or child of that individual's spouse).*

In the area marked "Please indicate which close family member will occupy the unit" the landlord indicated "the landlord or the landlord's spouse."

The tenant disputed the good faith of the notices. She highlighted the fact that no evidence was submitted by the landlord in support of their application and they cited the contradicting Notices to End Tenancy served two days apart.

In addition to a cancellation of the 2 Month Notices, the tenant sought a restriction on the landlord's right to enter the rental unit. In her application she noted that numerous showings of the home had been conducted without adequate notice.

### Analysis

*Residential Tenancy Policy Guideline 6.6 states:*

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the **landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.**

I find the landlord was sufficiently served in accordance with sections 89 & 90 of the Act. I find their failure to attend the proceedings and to provide any evidence in support of their Notices to End Tenancy has led to a dismissal of these Notices. I accept the

tenant's undisputed testimony that the Notices were not issued in good faith and find this tenancy shall continue until they are ended in accordance with the *Act*.

The tenant sought an Order setting limits on the landlord's ability to enter the rental unit. The landlord is directed to ensure they comply with section 29 of the *Act* and to provide the tenants with 24 hours notice in writing of their intention to enter the rental unit.

As the tenants were successful in their application, they may recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

### Conclusion

The 2 Month Notice dated July 28, 2020 is dismissed without leave to reapply.

The 2 Month Notice dated July 30, 2020 is dismissed without leave to reapply.

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

The landlord is ordered to comply with the provisions contained in section 29 of the *Act* and must provide the tenants with adequate notice of their intention to enter the rental unit.

The tenant may withhold \$100.00 from a future rent on **ONE** occasion in full satisfaction for a return of the filing fee pursuant to section 72 of 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: September 17, 2020

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Residential Tenancy Branch