



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on October 16, 2020. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the 2-Month Notice).

Both parties were present at the hearing and provided testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord confirmed receipt of the Tenants' application and Notice of Hearing package. The Landlord also confirmed receipt of the Tenants' evidence package on October 1, 2020. The Tenant provided a third package, which contained submissions and evidence. The Tenant put this in the Landlord's mailbox on October 11, 2020, and the Landlord received this package on October 13, 2020.

As stated in the hearing, all evidence to be relied upon by the applicant must be received by the respondent no later than 14 days before the hearing. I find the first two packages served by the Tenants to the Landlords were served appropriately and in time. However, the third package was served a matter of days before the hearing. I accept the "submissions" and arguments made in that package, but decline to consider any evidence provided in the last package, as that should have been served to the Landlord

no later than October 2, 2020. The Tenants referred to an amendment they filed, but this amendment was not provided or uploaded for my consideration. As such, it will not be addressed further.

The Tenants acknowledge receiving the Landlords evidence package on October 9, 2020, which is within the acceptable time frame under the Rules of Procedure (Applicant must receive respondent's package 7 days before the hearing). The Landlord submitted a second package to the Tenants on October 14, 2020, which the Tenants acknowledge getting that day. However, for the same reasons above, this package is late, and is not admissible in terms of documentary evidence provided. However, any submissions or arguments contained in this late package will be considered, as the Rules of Procedure are largely related to service of documentary evidence, not written submissions.

### Preliminary Matters

The Tenants raised the issue of *Res Judicata* in that the Landlords have already issued them a 2-Month Notice for the exact same reason a couple of months ago. More specifically, the Tenants stated that the Landlord issued them a 2-Month Notice on June 27, 2020, under the exact same grounds as this Notice, which they received on August 27, 2020. Copies of both notices were provided into evidence.

In the hearing, the Landlord confirmed that they issued a 2-Month Notice in June 2020 for the same reason, so that their son L.G. could move into the unit. The Landlord stated they were unaware of how to prepare their case for the last hearing, and they did not present enough corroborating evidence. As a result that 2-Month Notice was cancelled on August 6, 2020. The Landlord confirmed that they re-issued this 2-Month Notice (which the Tenants applied to cancel for this hearing) for the same reasons, to the same Tenants, at the same rental unit.

I have considered the fact patterns and the 2-Month Notices that have been issued. I note that the Landlord has issued the August 27, 2020, 2-Month Notice for a substantively similar reason, to the same Tenants, at the same rental address, a matter of weeks later. I find that a decision has already been rendered on this matter, and I cannot re-hear, change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

In light of the above, I have not re-heard the matters already dealt with at the hearing from August 6, 2020. I find there is insufficient evidence that the new Notice, issued on August 27, 2020, relates to a new circumstance, a new reason, or a different factual underpinning. Although this is a new Notice, the reasons behind it are the same, and the Landlord cannot simply re-issue a nearly identical Notice for the same reasons in an attempt to bolster their position, which should have been done at the time that matter was first heard. I hereby cancel the 2-Month Notice issued on August 27, 2020, as I find it is based on a matter that has already been adjudicated very recently.

The Tenants' application to cancel the Notice is granted.

I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenants were successful with their application, I grant them the recovery of the filing fee against the Landlord. The Tenants may deduct the amount of \$100.00 from 1 (one) future rent payment.

### Conclusion

The Tenants' application is successful. The Notice is cancelled.

The Tenants may deduct the amount of \$100.00 from 1 (one) future rent payment.

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: October 16, 2020

---

Residential Tenancy Branch