



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL, FFT**

### Introduction

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

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Agent for the current owner, JD, the former owner and Landlord, GS, and Agent and Translator for the former owner and Landlord, HS, attended the hearing at the appointed date and time. One Tenant, CO, came into the teleconference 30 minutes into the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The former Landlord's Agent served the Tenants with the Two Month Notice on December 25, 2021 by posting the notice on the Tenants' door. While posting the Two Month Notice, one Tenant came out of the house, and the former owner's Agent handed the Two Month Notice to the Tenant. The Tenants' dispute resolution application states the Two Month Notice was delivered on December 25, 2021 and was posted on their door. I find this Two Month Notice was served according to Section 88(g) of the Act.

Tenant CO testified that he served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on January 19, 2022 by Canada Post registered mail (the “NoDRP package”). The Tenants uploaded the Canada Post registered mail tracking number into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on January 24, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord’s Two Month Notice?
2. Are the Tenants entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

Tenant CO confirmed that this periodic tenancy began in 2015. Present monthly rent is \$1,900.00 payable on the first day of each month. The former Landlord does not remember if he ever received a security or pet damage deposit and the Tenants did not list that they paid either of these deposits.

The reason noted on the Landlord's Two Month Notice was that “*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.*” The purchaser information lists the name of the buyer of the residential property. The effective date on the Two Month Notice was inadvertently noted as March 1, 2021.

The new Landlord’s Agent testified that an assignee of the residential property and his sister and her spouse intend, in good faith, to reside in the residential property.

The Tenant states he was told by the new Landlord’s Agent that “*the house will be rented out.*” The new Landlord’s Agent corrected her text message to the Tenants

stating the last line of point 4 of this message should read, "*The home will not be rented as this is entire large Indian family.*"

### Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49 of the Act is the relevant part of the legislation for this matter. It states:

#### ***Landlord's notice: landlord's use of property***

**49** (1) *In this section:*

*"close family member" means, in relation to an individual,*

- (a) the individual's parent, spouse or child, or*
- (b) the parent or child of that individual's spouse;*

*...*

*"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.*

(2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy*

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be*
  - (i) not earlier than 2 months after the date the tenant receives the notice,*
  - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and*
  - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or*

...

- (5) *A landlord may end a tenancy in respect of a rental unit if*
- (a) *the landlord enters into an agreement in good faith to sell the rental unit,*
  - (b) *all the conditions on which the sale depends have been satisfied, and*
  - (c) *the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*
    - (i) *the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;*

...

- (7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.*
- (8) *A tenant may dispute*
- (a) *a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or*

...

The Tenants were served with the Two Month Notice on December 25, 2021. The Tenants applied for dispute resolution on January 8, 2022 within the 15 days after the date they received the Two Month Notice. The original purchaser of the property does not intend to live in the residential property, instead the new Landlord's Agent testified that an assignee of the residential property and his sister and her spouse intend, in good faith, to reside on the residential property. The Two Month Notice specifies that the purchaser of the residential property intends to reside in the home.

RTB Policy Guideline #2A helps landlords and tenants understand issues that are likely to be relevant in residential tenancies as in this case. Policy Guideline #2A states:

*Section 49 of the Act allows a landlord to end a tenancy if the landlord:*

...

3. *enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the **purchaser** asks the landlord, in writing, to give notice to end the tenancy because the **purchaser or a close family member** intends, in good faith, to occupy the unit.*

I caution the Landlord to regard Section 51 of the Act regarding: **Tenant's compensation** after a Section 49 notice, which comes into play when the Landlord does not fulfil the stated purpose in their notice. The purchaser does not intend to reside in the residential property, and I find the Landlord has not proven his case on a balance of probabilities, that the purchaser intends to reside in the residential property. I cancel the Landlord's Two Month Notice, and the tenancy will continue until ended in accordance with the Act.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

### Conclusion

The Tenants' application to cancel the Landlord's Two Month Notice is granted.

The Tenants may withhold \$100.00 from next month's rent to recover their application 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 Act.

Dated: April 05, 2022

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Residential Tenancy Branch