



# 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 Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use dated February 19, 2022 (the "Two Month Notice") pursuant to section 49; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

One of the Tenants, SB, attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Landlord did not attend this hearing. I left the teleconference hearing connection open until 1:40 pm in order to enable the Landlord to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that SB and I were the only ones who had called into the hearing.

I advised SB that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. SB confirmed that he was not recording this dispute resolution hearing.

### Preliminary Matter – Addition of Party

SB confirmed his spouse SH is also a tenant on the tenancy agreement. SB confirmed he was attending the hearing on his own behalf and as agent for SH. A copy of the Two Month Notice submitted into evidence also names SH as a tenant. Accordingly, I added SH as a party to this application, pursuant to Rule 7.13 of the Rules of Procedure.

### Preliminary Matter – Service of Dispute Resolution Documents

SB confirmed that he sent the notice of dispute resolution proceeding package (the “NDRP Package”) to the Landlord by registered mail on March 9, 2022. SB submitted a Canada Post registered mail receipt with a tracking number in support. This Canada Post tracking number is the first of two tracking numbers referenced on the cover page of this decision.

SB testified he sent his documentary evidence (the “Documentary Evidence”) to the Landlord by registered mail on March 11, 2022. SB submitted the Canada Post registered mail receipt and tracking number in support. This second tracking number is also referenced on the cover page of this decision.

SB testified both registered mail packages were shown as delivered by Canada Post.

Based on the foregoing, I find that SB has served the Landlord with the NDRP Package and the Documentary Evidence in accordance with sections 89(1)(c) and 88(c) of the Act. Pursuant to section 90(a) of the Act, I find the Landlord is deemed to have received the NDRP Package on March 14, 2022, and the Documentary Evidence on March 16, 2022.

### Preliminary Matter – Landlord’s Non-attendance

Rule 7.3 of the Rules of Procedure states:

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Having found the Landlord to be duly served with notice of this hearing, I directed that the hearing be conducted in the absence of the Landlord.

### Issues to be Decided

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

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

SB submitted a copy of the tenancy agreement into evidence. SB confirmed the particulars of the tenancy as follows:

- The tenancy commenced on November 1, 2009 with the previous owners of the rental unit as landlords, and is on a month-to-month basis.
- Rent is currently \$1,420.00, due on the first day of each month.
- The Tenants paid a security deposit of \$625.00, which is held in trust by the Landlord.

SB testified he found copies of the Two Month Notice in the Tenants' mailbox and attached to their door on February 20, 2022. SB stated the Landlord also sent him a copy of the Two Month Notice by email on February 19, 2022, which he did not see until later.

SB submitted a copy of the Two Month Notice into evidence. The Two Month Notice is dated February 19, 2022, with an effective date of April 30, 2022. The Two Month Notice is signed by the Landlord, and suggests that the rental unit is owned by a numbered company, 0865132 BC Ltd. The Two Month Notice indicates that the rental unit will be occupied by the father or mother of the landlord or the landlord's spouse.

SB testified that there had been problems with the heat in the rental unit and conflicts with the downstairs tenants, which led up to the Landlord's issuance of the Two Month Notice.

### Analysis

#### *1. Are the Tenants entitled to cancellation of the Two Month Notice?*

Section 49(8)(a) of the Act permits a tenant to dispute a two month notice to end tenancy for landlord's use within 15 days of receiving such notice. In this case, I accept SB's testimony and find that the Tenants received copies of the Two Month Notice on

February 20, 2022. Records indicate that this application was made on February 24, 2022. Therefore, I find that SB made this application within the 15-day dispute period required by section 49(8)(a) of the Act.

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.

When a tenant makes an application to dispute a two month notice to end tenancy, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the notice and to demonstrate good faith in issuing the notice.

In particular, Rule 6.6 of the Rules of Procedure states that a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a notice to end tenancy.

The Landlord in this case did not submit any documentary evidence and did not make an appearance despite having been duly served with notice of this hearing.

In the absence of any evidence or submissions, I find the Landlord has not met the onus of justifying the grounds for issuing the Two Month Notice.

Accordingly, I order that the Two Month Notice be cancelled and of no force or effect.

*2. Are the Tenants entitled to recovery of the filing fee?*

The Tenants have been successful in cancelling the Two Month Notice. I award the Tenants reimbursement of the filing fee in accordance with section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to deduct \$100.00 from rent payable to the Landlord for the month of July 2022.

Conclusion

The Two Month Notice dated February 19, 2022 is cancelled and of no force or effect.

The Tenants are authorized to deduct \$100.00 from rent payable to the Landlord for the month of July 2022.

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: June 09, 2022

---

Residential Tenancy Branch