



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing dealt with the tenant's 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*.

The landlords did not attend this hearing, which lasted approximately 20 minutes. The tenant attended the hearing and 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 Registered Mail, a copy of the application for dispute resolution hearing package to the landlord on December 9, 2016. 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 duly served with this application on December 14, 2016, five days after it was sent by Registered Mail.

### Issue(s) to be Decided

Should the landlord's 2 Month Notice to End Tenancy be cancelled?

### Background and Evidence

The tenant acknowledged receipt of a 2 Month Notice on October 31, 2016. The tenant provided a copy of the 2 Month Notice with her evidence package. The tenant testified that a previous Residential Tenancy Branch hearing had been scheduled for December 7, 2016, but the landlord did not call into that hearing. During the December 7 hearing, the tenant was successful in cancelling the landlord's 1 Month Notice to End Tenancy, while her application to cancel a 2 Month Notice to End Tenancy was dismissed with leave to reapply. The arbitrator in the December 7, 2016 hearing noted that the tenant had failed to serve the landlord pursuant to section 89 of the *Act*, and therefore could not consider the tenant's application. The arbitrator in the December 7 hearing notified the tenant that the application to cancel the 2 Month Notice was time-sensitive and

leave to reapply did not extend any applicable limitation period. The tenant confirmed that she understood it was an urgent matter and she would attend at the RTB office to file a new application in person on the date of this hearing,

#### Analysis – 2 Month Notice

Section 49(8) of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 2 Month Notice.

The tenant did not file for dispute resolution within fifteen days of receipt of this notice, however; she explained that because she had a pending hearing concerning a separate application to cancel a 1 Month Notice to End Tenancy, she did not know that she had to also dispute this one. When the landlord did not appear at that hearing, she applied to dispute the 2 Month Notice. Pursuant to section 62 of the *Act* and as the landlord did not attend the current hearing, I accept the tenant's late dispute of this 2 Month Notice. Since the landlord did not attend the hearing, I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the 2 Month Notice.

#### Conclusion

The tenant's application to cancel the 2 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with 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: January 17, 2017

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Residential Tenancy Branch