



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Dispute Codes: CNL, FF

## Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated June 2, 2016 and setting the end of tenancy for August 31, 2016.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the 2 month Notice to End Tenancy was sufficiently served on the Tenant on June 2, 2016.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where they reside. The Policy Guidelines provides that a party cannot avoid service by failing to pick up their registered mail. I find that the Application for Dispute Resolution/Notice of Hearing was filed by the Tenant was served on landlord by mailing, by registered mail to where the landlord resides on August 15, 2017. I determined that it was sufficiently served even though the landlord failed to claim the package. With respect to each of the applicant's claims I find as follows:

## Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated June 2, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

## Background and Evidence:

The tenancy began in 2003. The tenancy ended in early August after the Tenant vacated after receiving a 2 month Notice to End Tenancy. The rent was \$1300 at the time the tenancy ended. The tenant paid a security deposit of \$600. The security deposit has been returned.

The property was sold. The landlord served a 2 month Notice to End Tenancy on the Tenant on June 2, 2017. The grounds set out in the Notice provide "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." The Tenant did not dispute the Notice to End Tenancy and moved out in early August 2016.

The tenant testified the landlord failed to move into the rental unit as indicated in the Notice to End Tenancy and instead rented it to a third party.

Analysis:

I dismissed the Tenant's application for an order to cancel the 2 month notice dated June 2, 2016. Section 49(9) of the Residential Tenancy Act provides as follows:

"49(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date."

I determined there is no basis to cancel the two month Notice to End Tenancy even if the landlord failed to move. The tenant had 15 days from receipt of the Notice to file an Application for Dispute Resolution for an order to cancel the Notice. The tenant failed to do so. The Act provides that where the tenant failed to file such an Application the Tenant is conclusively deemed to have accepted the end of the tenancy and must vacate on the effective date of the Notice.

As a result I dismissed the Tenant's application to cancel the 2 month Notice to End Tenancy and to recover the cost of the filing fee.

The Application for Dispute Resolution filed by the Tenant did not include a claim for a monetary order and as a result no such order was made.

The Act provides a remedy where a landlord fails to do what is set out in the Notice. As a courtesy to the parties I have pasted the provisions of section 51(2) of the Act which provides as follows:

**Tenant's compensation: section 49 notice**

**51 (2)** In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The tenant retains the right to file a new Application for Dispute Resolution seeking a monetary order subject to the provisions of the Residential Tenancy Act.

**This decision is final and binding on the parties.**

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: November 01, 2017

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Residential Tenancy Branch