



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on February 15, 2018 (the "Application"). The Tenants applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 1, 2018 (the "Two Month Notice"). The Tenants also sought reimbursement for the filing fee.

Tenant B.Y. appeared at the hearing and appeared as agent for Tenant S.L. Tenant B.Y. provided the correct legal spelling of her full name. I amended the Application to indicate her full name and the style of cause reflects this. Landlord P.K. appeared at the hearing and appeared as agent for Landlord R.K. The hearing process was explained to the parties and neither had questions about the proceedings.

Landlord P.K. confirmed that both herself and Landlord R.K. received the hearing package and Tenants' evidence prior to the hearing. Landlord P.K. confirmed that she had a chance to review the evidence. Tenant B.Y. said she was not served with the Landlords' evidence prior to the hearing. The only evidence submitted by the Landlords was the Two Month Notice which was the same notice served on the Tenants and submitted as evidence by the Tenants. I admitted the Landlords' evidence pursuant to rule 3.17 of the Rules of Procedure despite it not being served on the Tenants as I could not see how doing so could prejudice the Tenants or result in a breach of the principles of natural justice when the Tenants had previously been served with the Two Month Notice and had submitted the same notice as evidence.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have reviewed the documentary evidence submitted and considered the oral testimony. I have only referred to the evidence I find relevant in this decision.

Issue to be Decided

1. Should the Two Month Notice be cancelled?

Background and Evidence

The Tenants submitted three documents as evidence. First, the Two Month Notice which is two pages. Second, a written tenancy agreement between the Landlords and Tenants which is six pages. Third, copies of text messages between Tenant B.Y. and Landlord P.K. which total five pages. Tenant B.Y. also provided affirmed testimony during the hearing.

The Landlords submitted a copy of the Two Month Notice which is two pages. The Landlords did not submit any further evidence. Landlord P.K. provided affirmed testimony during the hearing.

The Tenants had provided a copy of the written tenancy agreement listing both Landlords as landlords and both Tenants as tenants. However, Landlord R.K. and Tenant S.L. had not signed the agreement. Landlord P.K. confirmed Landlord R.K. is a co-landlord under the agreement. Tenant B.Y. confirmed she understood Landlord R.K. to be a co-landlord under the agreement. Tenant B.Y. said Tenant S.L. was not present when the agreement was signed but it was understood Tenant S.L. was a tenant under the tenancy agreement. Landlord P.K. confirmed it was understood Tenant S.L. was a tenant under the agreement.

Both parties agreed the tenancy started September 1, 2015 on a month-to-month basis. Both agreed the rent was \$1,100.00 per month initially and that it decreased at some point to \$1,050.00 per month because the Tenants no longer required laundry services. Both agreed rent is due on the first day of each month.

Both parties testified that the Landlords live upstairs at the rental address and the Tenants live in one of the downstairs suites at the rental address. Landlord P.K. testified that the entire house is owned equally by her, her husband Landlord R.K., her father-in-law and her mother-in-law. She said all four are on title.

Tenant B.Y. testified that when she moved in, Landlord P.K. told her that Landlord P.K.'s father-in-law and mother-in-law own the house but do not deal with the rental because they do not speak English. Tenant B.Y. testified that when she moved in, Tenant S.L. needed a form signed by the owner of the rental unit and Landlord P.K. said

she could not sign the form because she was not the owner. Tenant B.Y. also testified that previously there were issues with the rent and when she spoke to Landlord P.K. about these, Landlord P.K. said she would have to talk to her father-in-law and mother-in-law because they owned the house. Tenant B.Y. said she was told Landlord P.K. owned the house for the first time in the text messages submitted as evidence and that the text messages show this.

In reply, Landlord P.K. said she told Tenant B.Y. her father-in-law and mother-in-law are the main owners of the house. She said she does not make decisions about the house on her own given that four people own the house. She said she must talk to her father-in-law and mother-in-law when issues arise regarding the house. Landlord P.K. said her father-in-law and mother-in-law bought the house but that the Landlords names are on title because they are paying the mortgage. Landlord P.K. said the Landlords owned the house when the tenancy started September 1, 2015.

Both parties agreed Landlord P.K. served the Two Month Notice on Tenant B.Y. personally on February 5, 2018. Tenant B.Y. confirmed Tenant S.L. was also aware of the Two Month Notice as of February 5, 2018.

Tenant B.Y. testified that she filed the Application on February 15, 2018. She said she paid the filing fee on the same date. She said she knew this because she sent the hearing package to the Landlords on February 15, 2018 based on the registered mail receipt. She also said she looked at her email during the hearing and confirmed that she received an email from the Residential Tenancy Branch with a receipt for the filing fee on February 15, 2018. Landlord P.K. did not take issue with this evidence.

I note the following from a review of the Two Month Notice. It is on the approved form. It is addressed to the Tenants and references the rental unit address. It has an effective date of April 30, 2018. It is signed by Landlord R.K. and dated February 1, 2018. It indicates that the reason for the Two Month Notice is that the "rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse)".

In relation to the grounds for the Two Month Notice, Landlord P.K. testified as follows. The house has three separate suites. The upstairs is one suite and has three bedrooms. The downstairs has two suites, each with two bedrooms. Eight people live in the upstairs suite. Her mother-in-law and father-in-law live in one of the upstairs rooms. Her sister-in-law lives in one of the upstairs rooms. Landlord P.K., her husband Landlord R.K. and their three children live in one of the upstairs rooms. Her younger

daughter was not born when the rental unit was rented out and is now one-and-a-half. Her older daughter is thirteen years old and needs her own space and own room. Landlord R.K. has been sleeping on the floor. The family does not have enough room for their belongings upstairs.

Landlord P.K. testified that the family wants to use one of the bedrooms in the rental unit so that either Landlord P.K. and Landlord R.K. or her sister-in-law can move downstairs. She said they can only use one of the rooms in the rental unit because her brother and mother live in the other downstairs suite. Landlord P.K. said the intention is to use one of the bedrooms in the rental suite and rent the remainder as a one-bedroom suite. She confirmed that the intention is to rent the one-bedroom suite to a nonfamily member. Landlord P.K. said the bedroom the family wants to use can be separated from the suite and connected to the upstairs suite such that the new tenant would not share the suite with a family member.

Tenant B.Y. testified that her and Tenant S.L. currently use the entire two-bedroom suite downstairs. She said the Landlords wanted one of the bedrooms back but her and Tenant S.L. did not want to move into one room. Tenant B.Y. said when she initially asked the Landlords who was moving into the room, the Landlords simply said a family member. She said she asked if it was Landlord P.K.'s sister-in-law and the Landlords said no. Tenant B.Y. said the Landlords told her they wanted to rent the second bedroom. Tenant B.Y. confirmed that the bedroom Landlord P.K. wants to use can be separated from the suite and connected to the upstairs suite.

I asked Tenant B.Y. for her submissions regarding the text messages submitted. She said the text messages show the Landlords intend to rent the second bedroom out. She noted the text messages say Landlord P.K. is the owner of the house. She pointed out the text messages only say a family member is moving into the room downstairs and do not indicate a specific plan about which family member.

I asked Landlord P.K. for her submissions regarding the text messages. She agreed these were sent by her and took no issue with the validity of them. I understood Landlord P.K. to say that she did not indicate who was moving into the room downstairs in the text messages because the family was unsure of who would be moving downstairs at that point. She then said that, at the time the Two Month Notice was served, the plan was that either her and her husband or her sister-in-law would move downstairs.

I note the following from a review of the text messages. When Tenant B.Y. asked Landlord P.K. who was moving into the room downstairs, the answer was simply “my family member”. When Tenant B.Y. asked if it was Landlord P.K.’s sister-in-law, Landlord P.K. seemed to indicate it was not. When Tenant B.Y. stated her understanding of the law, Landlord P.K. again said simply that an immediate family member was moving in. The same text from Landlord P.K. does seem to indicate that she is an owner of the house. After further comments from Tenant B.Y., Landlord P.K. said that a blood relative was moving in. Landlord P.K. then indicated that they are keeping one of the rooms and renting the second room out as a one bedroom.

### Analysis

Section 49 of the *Residential Tenancy Act* (the “Act”) outlines the circumstances in which a landlord can end a tenancy so that the landlord or a close family member can use the property. The relevant portions of section 49 state:

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

##### **49 ...**

(2) Subject to section 51...a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) 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

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

...

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

...

The Landlords have the onus to prove the grounds for the Two Month Notice.

I find based on the testimony of both parties that the tenancy agreement for the rental unit is between Landlord P.K., Landlord R.K., Tenant B.Y. and Tenant S.L. even though Landlord R.K. and Tenant S.L. did not sign the written tenancy agreement.

Based on the evidence of both parties, I find the Landlords gave the Tenants the Two Month Notice pursuant to section 49(2) of the *Act*. I find based on the testimony of both parties that Tenant B.Y. was personally served with the Two Month Notice on February 5, 2018. I find the Two Month Notice was served in accordance with section 88(a) of the *Act*.

Pursuant to section 49(8) of the *Act*, the Tenants had fifteen days from February 5, 2018 to dispute the Two Month Notice. I accept the undisputed testimony of Tenant B.Y. that she filed the Application and paid the filing fee on February 15, 2018. Based on this, I find the Tenants did dispute the Two Month Notice within the time limit set out in section 49(8) of the *Act*.

I do not find it necessary to decide whether I am satisfied on a balance of probabilities that the Landlords own the rental unit or that the Landlords intend in good faith to occupy, or have a close family member occupy, one of the rooms in the rental unit.

As stated in section 49(3) of the *Act*, a landlord “may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit” (emphasis added). In this case, the tenancy agreement covers the entire rental unit including both bedrooms. Landlord P.K. acknowledged that the intention is to use one of the rooms in the rental unit and to rent the remainder of the unit out as a one bedroom suite. Based on the evidence of Landlord P.K., I cannot find that the Landlords intend to occupy the rental unit which includes both bedrooms. The Landlords cannot occupy one bedroom in the rental unit and then rent out the other bedroom as this is contrary to section 49 of the *Act*. Therefore, I find the Landlords are not permitted to end the tenancy under section 49(3) of the *Act* and I cancel the Two

Month Notice accordingly. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants were successful in this application, I award them the filing fee in the amount of \$100.00 pursuant to section 72(1) of the *Act*. Pursuant to section 72(2)(a) of the *Act*, I authorize the Tenants to deduct this \$100.00 from one of their future rent payments.

### Conclusion

The Landlords have failed to prove the grounds for the Two Month Notice and therefore the Two Month Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenants are awarded \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2)(a) of the *Act*, I authorize the Tenants to deduct this \$100.00 from one of their future rent payments.

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: May 4, 2018

---

Residential Tenancy Branch