



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION AND ORDER**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a two month Notice to End Tenancy for the Landlord's use of the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issues(s) to be Decided

Should the Notice to End Tenancy be cancelled?

### Background and Evidence

The Tenant moved into the rental unit under a verbal agreement with the Respondent.

The Respondent and the Tenant had a prior common law relationship. They have a child, who currently resides at the rental unit with the Tenant, his father.

Prior to the Tenant moving in, the Respondent was a tenant in the rental unit and apparently had a verbal agreement with the Landlord (who lives in Europe), to take care of the rental unit and collect rent for the absentee Landlord.

The Respondent moved out of the rental unit and allowed the Tenant and their child to reside in the unit under a verbal agreement.

The Respondent apparently wants to move back into the rental unit and issued the Tenant a two month Notice to End Tenancy under section 49 of the *Residential Tenancy Act* (the "Act").

The Tenant applied to have the Notice cancelled as he says the Respondent has no intention of living there.

## Analysis

Section 49 of the Act allows a landlord to give a Notice to End Tenancy to a tenant when the landlord or other individuals (such as “close family member”), as defined in section 49, intend in good faith to occupy the rental unit.

The relevant portions of the section are:

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

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

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

...

**"landlord" means**

(a) for the purposes of subsection (3), an individual who

- (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
- (ii) holds not less than 1/2 of the full reversionary interest, and

...

(2) Subject to section 51 [tenant's compensation: section 49 notice], 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.

The Respondent had no evidence to show she had either a reversionary interest in the property and therefore was a landlord, or that she is a close family member, as required in the definitions for section 49.

Indeed, the Respondent did not even produce any written evidence from the Landlord that she had the authority to act on behalf of the Landlord.

Therefore, based on the testimony and evidence before me, and on a balance of probabilities, I find the Respondent does not meet the definition of landlord or the other individuals defined in this section of the Act, which is required in order to issue this type of Notice to End Tenancy.

As I have found the Respondent does not meet the required criteria under the Act to have issued such a Notice, I find I must cancel the Notice to End Tenancy.

**Therefore, I Order that the two month Notice to End Tenancy dated May 1, 2009, be cancelled as it is of no force or effect.**

## Conclusion

The two month Notice to End Tenancy is cancelled as the Respondent does not meet the criteria required in the Act to have issued such a Notice.

The Tenant may deduct the \$50.00 cost of the Application fee from one month of rent.

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: July 13, 2009.

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Dispute Resolution Officer