



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes CNL, OLC, FF, O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel the two Month Notice to End Tenancy for the landlords use of the property, for an Order for the landlord to comply with the Act, regulations or tenancy agreement, some other issues and a Monetary Order to recover the filing fee.

The tenant served the landlords agent by registered mail on December 01 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Has there been a breach of the *Residential Tenancy Act* by the landlord?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?
- What are the tenants other issues?



# Dispute Resolution Services

Page: 2

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Background and Evidence

This month to month tenancy started on April 12, 2008. The tenant pays a monthly rent of \$1,550.00 which is due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$775.00 on April 12, 2008. The tenant was given a Two Month Notice to End Tenancy on November 17, 2009 with a date to vacate given as January 31, 2010. This was sent to the tenant by registered mail and was received by the tenant on November 18, 2009. The tenant applied to dispute this Notice on November 30, 2009. The reasons given on the Notice to End the Tenancy are that the landlord or a close family member wishes to occupy the rental unit.

The tenant disputes this Notice she states that she believes the reasons given by the landlord are untrue. The tenant testifies that the landlord lives in the United States and she has provided evidence that the landlord has been seeking work and accommodation in 2009 in the United States. The tenant also argues that as the landlords' family have been looking for a three bedroom house in the United States why they would want to move into a one bedroom unit in a downtown high rise. The tenant feels that that she is being evicted because the landlord wants to re-rent the unit for the Olympics and the landlord should comply with the *Residential Tenancy Act*.

The landlord argues that he is currently living in the United States and as he has been unable to find work there he will be returning to Vancouver to seek work in his previous occupation as a realtor. The landlord has provided evidence of his past realtor licence which he states he will reinstate on his return to the city. The landlord also states that he will be making this move on his own, at the present time, as his wife and children will remain in the United States. The landlord also states that he has some business interests which he hopes to expand in Vancouver.

The landlord states that he offered the tenant a continuation of her tenancy however he would have to raise the rent and enter into a new tenancy agreement with her because he would have to fund another place to live for himself. The tenant has refused this offer.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find that despite the tenants' arguments that the landlord will not be returning to Vancouver to occupy the rental unit, she has not provided sufficient evidence to indicate that the landlord will not be using the property for its intended purpose as given on the Notice to End Tenancy. I further find that the tenant has based her claim on an assumption that as the landlord has been seeking work in the United States that he will continue to live there and not return to Vancouver. I find therefore, that the landlord's Two Months Notice to End Tenancy under section 49 of the Act is upheld and the landlord is entitled to an Order of Possession as requested.

However I would direct both parties to the *Residential Tenancy Act* section 51 which states:

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

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

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



# Dispute Resolution Services

Page: 4

Residential Tenancy Branch  
Ministry of Housing and Social Development

*(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.*

## Conclusion

The Tenant's application is dismissed without leave to reapply. The Two Month Notice to End Tenancy for the landlords' use of the property will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on January 31, 2010. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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 12, 2010.

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Dispute Resolution Officer