



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes CNL, FF

### Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties .

All testimony was taken under affirmation.

### Issues(s) to be Decided

This is a request to have a section 49 Notice to End Tenancy for landlord use canceled and a request of the respondent bear the \$50.00 cost of the filing fee that was paid for this application for dispute resolution.

### Background and Evidence

The landlord served the tenant a two month Notice to End Tenancy giving the reason as follows:

- The rental unit will be occupied by the landlord or the landlord spouse or close family member of the landlord or the landlords spouse.

The applicant testified that:

- They rent the whole house from the landlord, and in turn they have rented out the lower suite to a subtenant.

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- After receiving the notice they were informed that the landlord only wants to use the lower suite for himself and that the landlord would be willing to allow them to stay in the upper suite.
- They therefore gave Notice to End Tenancy to their subtenant and are willing to negotiate a new rate to stay in the upper suite however to date they have been unable to do so.
- They have attempted to negotiate a new tenancy for the upper suite however the landlord has not cooperated.

The tenants therefore believe that since the landlord does not intend to use the full rental unit the Notice to End Tenancy should be cancelled.

Agent for the landlord testified that:

- The landlord fully intends to move into the lower suite of this rental property, however since the tenants rented the whole property and not just the lower suite the landlord was required to give a two month Notice to End Tenancy if he wished to move into the lower suite.
- The landlord was willing to allow the tenants to stay in the upper portion of the house, and attempted to negotiate a rental agreement for that portion of the property however they have been unable to come to an agreement with the tenants as the amount the tenants were willing to pay was less than they were willing to accept.

The landlords therefore request that the Notice to End Tenancy be upheld as the landlord fully intends to move into the lower portion of the rental property, and that an Order of Possession be issued for the final day of the tenancy.

## Analysis

When tenants are renting a property from a landlord, and the landlord wishes to move into that rental property, even if it's only a portion of that property, the landlord is required to give a section 49, two month Notice to End Tenancy for landlord use, to the tenants. In this case that is what has happened. The tenants rent my whole property from the landlord, and the landlord intends to move into the lower portion of that property.

The fact that the landlord attempted but failed to negotiate an agreement allowing the tenants to rent the upper portion of the house does not mean that this notice should be cancelled, because the landlord still intends to move into the lower portion of the rental unit, and the landlord was under no obligation to allow the tenant to stay in the upper portion of the rental unit.

Therefore the Notice to End Tenancy given by the landlord is a valid notice and I will not set it aside. At the request of the landlords I have issued an order possession.

## Conclusion

This application is dismissed without leave to reapply and I have issued an order possession to the landlords or 1:00 p.m. on February 28, 2010.

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: February 18, 2010.

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Dispute Resolution Officer