

## **DECISION**

### **Dispute codes**

CNL, FF

### **Introduction**

This hearing was convened in response to an application by the tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use (Notice to End), and to recover the filing fee for their application.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing.

The tenant was given full opportunity to be heard, to present evidence and to make submissions.

### **Issue(s) to be decided**

Should the landlord's Notice to End be cancelled?

### **Background and evidence**

This tenancy began December 15, 2009 as a fixed term tenancy for 15 ½ months ending April 01, 2011. The tenant provided a copy of the tenancy agreement into evidence. The landlord gave the tenant a 2 Month Notice to End for Landlord's Use of Property dated May 12, 2010 with an effective date of 2 months later: *for landlord's personal use*. The tenant argues the landlord cannot give them such a notice as they have a fixed term tenancy and that the landlord cannot give the tenant such a notice unless it is for no sooner than for the tenancy agreement end date of April 01, 2011.

### **Analysis**

Section 49 of the Residential Tenancy Act (the Act), in part states as follows

**(Emphasis for ease)**

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

**49** (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.

As a result, **I find** that in this tenancy the end of the tenancy is April 01, 2011, and the landlord cannot give the tenant a Notice to End Tenancy for Landlord's Use with an effective date earlier than the end date of the tenancy.

Therefore, **I Order** the landlord's Notice to End dated May 12, 2010 is set aside and is of no effect, and the tenant is entitled to recover their filing fee of **\$50**.

### **Conclusion**

**I Order** the landlord's Notice to End dated May 12, 2010 is of no effect.

**I Order** the tenant may deduct **\$50** from a future 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*.