



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPL, CNR, OPT, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord is seeking an order of possession and the tenant is seeking to cancel a notice to end tenancy and for an order of possession.

The hearing was conducted in a face to face hearing and was attended by the landlord and two witnesses and the tenants. The female tenant noted that she moved out of the property three weeks ago.

The tenants had made an application for an order of possession but at the start of the hearing the tenants acknowledged they were still living in the rental unit and therefore have possession of the rental unit. As a result the tenant's application is amended to exclude their request for an order of possession.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession based on a 2 Month Notice to End the Tenancy for Landlord's Use and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 49, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to sections 46 of the *Act*.

### Background and Evidence

This tenancy started in May or June 2009 when the current landlord purchased the house from the estate of his father. The parties are related and the tenant was already living in the property when it was purchased by the landlord. No written tenancy agreement was put in place and a verbal agreement was reached for the male tenant to rent the property from the time it was purchased.

On May 23, 2010 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use with an effective vacancy of July 31, 2010 citing the landlord intends to have the rental unit occupied by the landlord or landlord's spouse or a close family member of the landlord or the landlord's spouse.

The tenants acknowledged in their testimony that they received the notice on or about May 23, 2010 and that they did not file an Application for Dispute Resolution to dispute the notice within 15 days.

No testimony was provided related to the matters of unpaid rent.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy for his own use of the property as outlined in the notice to end tenancy if the landlord plans to have a close family member occupy the rental unit.

The same section stipulates that a tenant who has received a notice under this section may dispute the notice by making an application within 15 days after the date the tenant receives the notice. Failure to submit such an application means that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As the tenants confirmed that they did not make an application to dispute this notice I find that the tenants did accept the tenancy was to end on July 31, 2010. As I have found that the tenancy has ended by virtue of the landlord's application, I now find that the tenant's application to cancel a notice to end the tenancy for unpaid rent is no longer relevant and dismiss the tenants' application.

### Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenants**. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$50.00** comprised of the filing fee paid by the landlord for this application. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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: September 23, 2010.

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Dispute Resolution Officer