



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### Dispute Codes

CNL, FF

### Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for landlords' use of the property and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on February 01, 2011. The tenant provided Canada Post tracking information in her testimony which shows the package was not collected by the landlord and has been returned to the tenant. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing and the hearing proceeded in the landlords' absence.

Both parties were provided the opportunity to present evidence and make submissions. As the landlord did not appear the submissions were made by the tenant. On the basis of the evidence presented at the hearing, a decision has been reached.

### Issue(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy?

### Background and Evidence

The tenant testifies that her month to month tenancy started on June 01, 2004. This was a verbal agreement to rent the basement unit for \$550.00 per month. The tenant paid a security deposit of \$275.00 on or about May 16, 2004.

The tenant testifies she was served with a Two Month Notice to End Tenancy. This was in her mail box on January 28, 2011 and has an effective date of April 01, 2011. The reason given on this Notice is the rental unit will be occupied by the landlord or the landlord spouse or a close family member of the landlord or the landlords' spouse.

The tenant testifies that this notice was served on her after she had complained to the landlord about broken lights outside her unit which have caused her and her guests to fall down the steps.

The tenant testifies that she does not believe the landlords reason given on the Notice as the landlords told her that her parents would be moving into the suite; however the tenant states the landlords parents own their own house close by.

### Analysis

The landlord did not appear at the hearing to dispute the tenants' claims, despite having been served a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants evidence and affirmed testimony before me.

In this matter, the landlord has the burden of proof and must show that she intends to use the rental unit for her own use or for the use of a close family member as set out on the Notice to End Tenancy. This means that if the tenant disputes the reason given on the Notice, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence from the landlord that she intends to use the rental property for herself, her spouse or a close family member of herself or her spouse, I find that the landlord has not provided any evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

### Conclusion

The tenant's application is allowed. The Two Month Notice to End Tenancy for landlords use of the property dated January 28, 2011 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, she is entitled to recover her **\$50.00** filing fee

for this proceeding and may deduct that amount from her next rent payment when it is due and payable to the landlord.

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 16, 2011.

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Residential Tenancy Branch