



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, FF

### Introduction

This review hearing was convened as a result of the landlord's successful application for a review of the Decision of June 20, 2011, which was based upon the tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use (the "Notice").

In that Decision, the landlord was denied an Order of Possession due to the lack of a submission of a copy of the Notice in the file.

The landlord applied for a review based upon his contention that the Notice was submitted, but not accepted by the Branch Office. Thus the landlord's application was granted due to administrative error, and the Decision of June 20, 2011, was suspended, pending the review hearing.

Therefore the original application of the tenant was heard to consider the merits of his application and the landlord's Notice.

The tenant and his advocate and the landlord, his brother and interpreter and witness appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

### Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the 2 Month Notice to End Tenancy for Landlord's Use and to recover the filing fee?

### Background and Evidence

This month to month tenancy started on or about October 1, 2001. I heard testimony that the monthly rent is \$330.00, and there is no written tenancy agreement.

The subject of this dispute is the *2 Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") issued on May 11, 2011, by personal delivery, with a move out

date listed as July 15, 2011. The reason indicated on the Notice is that the rental unit will be occupied by the landlord, the landlord's spouse, or close family member of the landlord or landlord's spouse.

Under the Residential Tenancy Act (the "Act"), a notice under this Section must end the tenancy effective on a date that is not earlier than two months after the date the notice is received, and the day before the day in the month that rent is payable under the tenancy agreement. Thus I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to July 31, 2011.

Pursuant to the rules of procedure for the Residential Tenancy Act (the "Act"), the landlord's interpreter proceeded first in the hearing and testified as to why the tenant had been served with the 2 Month Notice to End Tenancy for Landlord's Use of Property.

According to the evidence and relevant testimony, the tenant rents and occupies a portion of the basement, in a home which has a main floor and a second floor. The landlord submitted that the rental home is small in square footage and that since the landlord's brother, his sister-in-law and nephew now live on the main floor, the landlord is in need of more space.

The landlord states that he, the landlord, now occupies the top floor of the home, which has two bedrooms. The landlord's nephew occupies the second bedroom on the second floor.

The landlord submits that he needs the extra space so that he, the landlord, can use the basement for extra living space for use during the hot summer months, to have his own entertaining area and to have his own bathroom facilities that he does not have to share with three other people. To confirm, the landlord stated that he intends to use the entire basement for his own use and for family gathering and guests. The landlord stated he does not intend to re-rent the rental unit.

In response, the tenant submitted that the landlord has told him several different reasons for ending the tenancy, including that he intends on selling the property or that he has insurance problems.

The tenant submits that the landlord does not have guests over and doesn't need the extra space. The tenant pointed out the fact that the landlord's brother is not considered a close family member as defined under the Act.

The landlord has mixed reasons for ending the tenancy, not for the reason stated on the Notice.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Under the Act, a landlord may end a tenancy for landlord's use pursuant to section 49 of the Act. Section 49(3) provides "a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or close family member of the landlord intends in good faith to occupy the rental unit". (my emphasis added)

In the circumstances before me, I find that the landlord has submitted sufficient evidence that he intends to use or occupy the portion of the basement for his own use. I find it reasonable that the landlord, who is nearing retirement, would be able to use the basement in the hot summer months and would need additional space other than the one bedroom on the top floor.

I also accept the landlord's submissions that he does not intend to sell the rental unit, and that the basement will be converted for his own use.

I find that, upon a balance of probabilities, the landlord has met his burden of proving the rental unit will be used for the stated purpose listed on the Notice.

As I find the landlord submitted sufficient evidence to establish that he intends to use the rental unit for the stated purpose listed on the Notice, I therefore **dismiss** the tenants' application to cancel the Notice, without leave to reapply. As I have dismissed the tenant's application, I decline to award him the filing fee.

As I have dismissed the tenant's application, I grant the landlord's request for an Order of Possession. However, due to the timing of the landlord's successful request for a review and in having to schedule a new hearing, I am not prepared to grant the landlord an Order of Possession for the effective date listed on the Notice.

I find it reasonable to extend the effective date and I therefore **grant** the landlord an Order of Possession to be effective on **August 31, 2011, at 1:00 p.m.**

I have enclosed an Order of Possession to serve upon the tenant in the landlord's decision. This order is a **legally binding, final order**, and may be filed in the Supreme Court should the tenant fail to comply with the order.

The parties are advised of the provisions of section 51(2) of the *Act*, which stipulates that the landlord must pay the tenant the equivalent of two months' rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

### Conclusion

The tenant's application is dismissed, without leave to reapply.

The landlord is granted an order of possession.

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: July 28, 2011.

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Residential Tenancy Branch