

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This is an application filed by the Tenant to cancel a 2 month notice to end tenancy for Landlord's use of the property and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

### Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the notice to end tenancy for Landlord's use?

### Background and Evidence

Both parties agreed that the Landlord was served with the notice of hearing documents by registered mail on September 25, 2011 as well as the Tenant's 1 evidence package. The Landlord has filed no evidence.

Both parties agree that a 2 month notice to end tenancy for Landlord's use of property was served on the Tenant on September 13, 2011. The notice dated September 6, 2011 was served twice. The first on September 7, 2011 without the second page and then the second time on September 13, 2011 with the reasons included. The reason selected by the Landlord is that, "The Rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

The Tenant claims that the Landlord's nephew is moving into the rental unit instead and has supplied two notes sent to them from the Landlord. The first note dated June 26, 2011 states that, "due to our family emigrating from the Philippines with no other place to live." The second note dated August 18, 2011 states, "and also reminder that our nephew will arrive in Canada on September 14, 2011, so give us a head of time to clean that suite before you leave." The Landlord disputes this stating that the rental unit will be occupied by her son. The Tenant disputes the Landlord's reasoning because he has never received any communication other than these two notes to end the tenancy.

The Landlord has confirmed that no communication has been made other than the Tenant's submitted evidence.

### Analysis

As both parties have attended the conference call hearing and have made detailed reference to the evidence submitted by the Tenant, I am satisfied that both parties have been properly served with the notice of hearing and any evidence documents.

I accept the Tenant's evidence that the notice dated September 6, 2011 was not issued for an immediate family member. Based upon the evidence and direct testimony of the Tenant, I find that the notice issued by the Landlord should be cancelled. The stated reasons do not match the Landlord's claim that her son will occupy the rental unit. The 2 month notice to end tenancy for landlord's use of property dated September 6, 2011 is cancelled and the Tenancy shall continue.

I find that the Tenant is entitled to recovery of the \$50.00 filing fee. I order that the Tenant may withhold \$50.00 from the November 2011 rent due.

### Conclusion

The Tenant's application to cancel the notice to end tenancy is granted. The Tenant may withhold \$50.00 from the November 2011 rent to recover the dispute application fee.

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: October 21, 2011.

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Residential Tenancy Branch