



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a Notice to End Tenancy for Landlord’s Use – Section 49; and
2. A Monetary Order for compensation - Section 67.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Notice valid?

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on June 11, 2011. Rent in the amount of \$925.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$450.00. On August 27, 2011, the Landlord served the Tenant with the Notice. The Landlord states that her son will be moving into the unit and that the tenancy is a month to month tenancy.

The Tenant states that the tenancy agreement is a fixed term agreement with an end date of September 11, 2011, followed by the option of a month to month tenancy. The Tenant states that when she entered into the tenancy agreement, both the Tenant and the Landlord wanted a long term tenancy and that she incurred extra costs for furniture

to live in the unit. The Tenant states that the Landlord has not provided her with one month's rent as required and that the Landlord has taken rent for October 2011. The Tenant asks that the Notice be cancelled and if not cancelled, the Tenant claims one month's rent and \$580.00 for the cost of moving. The Tenant states that she is unable to locate the tenancy agreement as it is still packed.

The Landlord states that she has accepted the rent for October 2011 and intends to pay the Tenant the equivalent of one month's rent.

### Analysis

Section 49 of the Act provides that a landlord may end a tenancy if a close family member of the landlord intends in good faith to occupy the rental unit. This section further provides that if the tenancy agreement is a fixed term agreement, the landlord may give notice to end the tenancy not earlier than the date specified as the end of the tenancy. Section 55 of the Act provides that a tenant who receives a notice under section 49, the tenant is entitled to receive from the landlord on or before the effective date of the notice an amount equivalent to one month's rent.

Given the evidence of the Landlord that the tenancy is a month to month tenancy and considering that the Tenant has not filed as evidence a fixed term tenancy agreement to rebut this evidence, I find that tenancy is a month to month tenancy and that the Landlord is entitled to serve the two month Notice with the effective date of November 1, 2011. Accepting that the Landlord intends to have her son move into the unit and that the Tenant has not provided any evidence that would rebut this intention, I find the Notice to be valid. Given the undisputed evidence that the Landlord has yet to provide the Tenant with the equivalent of one month's rent, I direct the Landlord to pay this amount to the Tenant before November 1, 2011. This amount is meant to remedy any losses claimed by the Tenant as a result of the ending of the Tenancy. Should the Landlord fail to provide this amount to the Tenant, the Tenant is at liberty to make an application for this amount. As the Notice is valid, I dismiss the Tenant's application.

Conclusion

The two month Notice to End Tenancy for Landlord's Use is valid and the application is dismissed.

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 3, 2011.

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Residential Tenancy Branch