



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, CNLC

### Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. To cancel a two month notice to end tenancy issued on May 2, 2012;
2. A monetary order for loss under the Act;
3. To have the landlord comply with the Act;
4. To have the landlord make repairs to the unit;
5. To have the landlord provided services required by the Act; and
6. To recover the cost of filing the application from the landlord.

The landlord's application is seeking orders as follows:

1. For an order of possession.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the notice to end tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the notice to end tenancy and the tenant's application to recover the filing fee at these proceedings. The balance of the tenant's applications is dismissed, with leave to reapply.

The tenant has applied to cancel a two month notice to ending tenancy for landlord's use of property issued on May 2, 2012, and the effective date of the notice was July 5, 2012. In a case where a tenant has applied to cancel a notice Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence and submission first, as the landlord has the burden of proving that the notice was issued for the reasons given on the Notice.

Issue(s) to be Decided

Should the two month notice to end tenancy issued on May 2, 2012, be cancelled?  
Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on September 6, 2011. Rent in the amount of \$350.00 was payable on the sixth of each month. A security deposit of \$175.00 was paid by the tenant.

Counsel for the landlord submits that the tenant was served with a notice to end tenancy for landlord's use of property and the reason stated was the unit will be occupied by the landlord's child.

The landlord testified through his counsel that the area where the tenant resides will have a small renovation to make it more private and suitable for his son and his son's girlfriend to reside.

The witness for the landlord (son) testified that he is twenty-eight years old and currently living with his parents on the upper floor of the property. The witness stated that he and his girlfriend have decided that they want to live together and are planning to move into the lower level of his parent's property.

The tenant testified that he has no objection to the girlfriend. The tenant stated he does not believe the whole area needs to be used for their living area.

The tenant testified that the landlord issued a prior two month notice to end which stated it was for renovations and question the landlord's truthfulness.

Counsel for the landlord argues that the landlord on April 28, 2012, issued a two month notice to end tenancy and he noticed he made an error. On May 2, 2012, counsel and the landlord completed a new notice to end tenancy and served the tenant.

Analysis

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

Were a tenant has filed to cancel a notice to end tenancy for landlord's use, the onus lies on the landlord to prove the landlord truly intends to use the premises for the purpose stated in the notice to end tenancy.

The evidence of the landlord was his son and his son's girlfriend will be moving into the lower level of the family home and a small renovation will be needed to make it more suitable for them to occupy.

The evidence of the landlord's witness was he and his girlfriend are planning to live together for the first time and they want to reside in the family home on the lower level.

The evidence of the tenant was he did not think they needed the whole space and he questioned the two month notice issued several days earlier.

I accept the evidence of the landlord and his witness that the landlord's son truly intended to be use premises as stated on the notice.

I also accept counsel's argument that the landlord made an error on the notice issued on April 28, 2012 and issued a new notice on May 2, 2012, with her assistance. I do not find that the landlord has attempted to be deceitful or has any other ulterior motive.

Therefore, I dismiss the tenant's application to set aside the notice to end tenancy issued on May 2, 2012. The tenancy will end in accordance with the Act on July 5, 2012, at 1:00 p.m.

As the tenant was not successful with his application the tenant is not entitled to recover the cost of filing the application from the landlord.

The landlord is granted an order of possession dated July 5, 2012 at 1:00 p.m.

### Conclusion

The tenant's application to set aside a two month notice to end tenancy issued on May 2, 2012, is dismissed.

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: May 31, 2012.

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Residential Tenancy Branch