



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

OPL, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use dated June 21, 2012 and effective August 31, 2012. Both parties appeared and each gave affirmed testimony in turn.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the Two Month Notice to End Tenancy for Landlord's Use?

### Background and Evidence

The landlord had submitted into evidence a copy of the Two-Month Notice to End Tenancy, indicating that the landlord was ending the tenancy so that the landlord or a close family member could move in. The landlord, testified that his family member was going to move into the lower suite and he is seeking an Order of Possession based on the Notice so that this can happen.

The tenant acknowledged that she did not file to dispute the Two Month Notice to End Tenancy for Landlord's Use. However, she called the Residential Tenancy Branch for advice. The tenant testified that she was told to ignore the Notice as it was not valid. The tenant was not able to clarify what the alleged flaw in the Notice was. The tenant believes that the landlord's application should be dismissed so that the tenancy can continue. The tenant was also concerned about her right to be paid the equivalent of one month compensation under the Act.

### Analysis

Under section 49(3) of the Act under, "*Landlord's notice: landlord's use of property*", the Residential Tenancy Act states that landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the

landlord intends in good faith to occupy the rental unit. In this section the definition of "*close family member*" means, in relation to an individual,

- (a) the individual's father, mother, spouse or child, or
- (b) the father, mother or child of that individual's spouse;

The tenant has submitted that the Two Month Notice to End Tenancy for Landlord's Use dated June 21, 2012 was not valid and should not be enforced.

Section 49(7) of the Act provides that a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. The tenant was not able to testify how this particular Notice was deficient and I find that the form and content of the Notice in evidence was fully compliant with the Act.

Section 49(8) of the Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice. The tenant confirmed that she did not file an application to dispute the Notice.

Section 49(9) of the Act provides that, if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

I find that the Notice received by the tenant contained the above information and the tenant could have disputed the Notice, had she chosen to do so.

I find that the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use in the proper form that was fully compliant with the Act. I find that the tenant then failed to dispute the Notice within the required 15 days. I find that the tenant did not vacate the unit on August 31, 2012, in accordance with the Notice.

For the reasons above, I find that the landlord is entitled to an Order of Possession.

With respect to the tenant's concern about her right to receive the equivalent of one-month rent in compensation for termination of the tenancy under section 49, I find that section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of

one month's rent payable under the tenancy agreement. The Act allows a tenant to withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

**Conclusion**

I find that the landlord is entitled to be compensated for the cost of the application and I order that the landlord may withhold \$50.00 from the tenant's security deposit.

I hereby issue an Order of Possession in favour of the landlord effective at 1:00 p.m. Sunday September 30, 2012. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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: September 11, 2012.

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Residential Tenancy Branch