



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, CNL

### Introduction

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

The landlord's application seeks an order as follows:

1. For an order of possession.

The tenant's application seeks an order as follows:

1. To cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, issued on September 13, 2013.

Both parties appeared, gave 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 at the hearing.

### Issues to be Decided

Should the Month Notice to End Tenancy for Landlord's Use of Property issued on September 13, 2013, be cancelled?

Is the landlord entitled to an order of possession?

### Background and Evidence

The parties agreed that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's use of Property, with an effective vacancy date of November 30, 2013. The reason stated in the notice was that,

"The rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) or the landlord or the landlord's spouse."

The landlord's agent stated that the landlord's son seeks to move into the basement unit that is in the family home. The landlord's agent stated that the son is 21 years old and currently living with his parents and the living situation is no longer ideal and the son needs to be living independently.

The landlord's agent stated that if they are successful with their application that they agree to extend the effective date to February 28, 2014, to ensure the tenant has sufficient time to find suitable accommodation for their family.

The landlord testified that their son is now an adult and needs to live separate from her and want him to be able to move into the basement suite in the family home.

The witness for the landlord (son) testified that he is 21 years old and currently living with his parents. The witness stated that he is now an adult and wants to live independently from his parents and the basement unit is perfect for him.

The tenant testified that he believed the landlord is only trying to get them to move-out of the rental because they wanted to increase the rent earlier in the year, in an amount that is above the allowable amount under the Act.

The witness for the landlord argued that they asked the tenant back in January 2013, if they could increase the rent to cover the extra cost they were incurring due the tenant have additional occupants residing the unit. The witness stated they never came to any agreement and the issue has not been raised since.

### Analysis

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

When a tenant has filed to cancel a 2 Month Notice for Landlord's Use of Property and calls into question the "good faith" requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an honest intention, that there is absence of malice and no ulterior motive to defraud or seek an unconscionable advantage

The evidence of the landlord was that her 21 year old son is currently living with them and that it is time for him to be living independently from them. The landlord stated that her son will be moving into the basement unit of the family home. The evidence of the landlord witness (son) was that he is 21 years old and that he wants to be living independently from his parents and the basement unit in the family home is perfect for his needs.

The evidence of the tenant was that that the landlord only issued the notice to end tenancy as they want to increase the rent. The evidence of the landlord's witness was that they did speak to the tenant at the beginning of the year to see if they could reach an agreement on a rent increase, due to the tenant having more occupants residing in the unit. However, no rent of rent increase for any amount was served on the tenant.

In this case, I accept the evidence of the landlord and their witness that the landlord's son truly intended to be use premises as stated on the notice as it would be reasonable that a 21 year old man would want to live independently from his parents by residing the basement suite in the family home. 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 September 13, 2013. The tenancy will end in accordance with the Act. As the landlord has agreed to extend the effective vacancy date of the notice, the tenancy will legally end on February 28, 2014.

The landlord is granted an order of possession dated February 28, 2014 at 1:00 p.m.

#### Conclusion

The tenant's application to set aside 2 Month Notice to End Tenancy for Landlord's Use of Property, issued on September 13, 2013, 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: November 05, 2013

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Residential Tenancy Branch

