



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNL, FF

### Introduction

This hearing was convened in response to an Application for Dispute Resolution in which the Tenant applied to set aside a Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the Landlord for the cost of filing this Application for Dispute Resolution.

The Tenant stated that on February 19, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant wishes to rely upon as evidence were delivered to the front desk of the complex where the Landlord is residing. The Landlord stated that she obtained these documents from the front desk on that date. I find that these documents have been received by the Landlord and they were accepted as evidence for these proceedings.

The Landlord and the Tenant were given the opportunity to provide relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Should the Notice to End Tenancy be set aside?

### Background and Evidence

The Landlord and the Tenant agree that they entered into a fixed term tenancy agreement for this rental unit, the fixed term of which runs from October 01, 2013 until October 01, 2014. The parties agree that the Tenant agreed to pay monthly rent of \$800.00 by the first day of each month.

The Landlord and the Tenant agree that on February 04, 2014 the Tenant was personally served with a Two Month Notice to End Tenancy for a Landlord's Use of Property, which declared that the Tenant must vacate the rental unit by April 04, 2014.

The reason for ending the tenancy cited on the Notice to End Tenancy was that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse.

The Landlord stated that the Notice to End Tenancy was served because she intends to move back into the rental unit as soon as it is vacant. The Tenant stated that he has no reason to dispute that the Landlord intends to move back into the unit.

### Analysis

Section 49 of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. On the basis of the undisputed evidence, I find that the Landlord intends to move into the rental unit. I therefore find that the Landlord has grounds to end this tenancy pursuant to section 49 of the *Act*. As the Landlord has grounds to end this tenancy pursuant to section 49 of the *Act*, I dismiss the Tenant's application to set aside the Notice to End Tenancy that he received on February 04, 2014.

Section 49(2) of the *Act* stipulates that if a landlord wishes to end a fixed term tenancy pursuant to this section, the landlord must give the tenant a Notice to End Tenancy that is not earlier than 2 months after the date the tenant receives the notice, is the day before the day in the month that rent is due, and is not earlier than the date specified as the end of the fixed term tenancy. As the rent is due by the first day of each month and the fixed term of this tenancy ends on October 01, 2014, I find that the earliest effective date of this Notice to End Tenancy is October 31, 2014.

Section 53 of the *Act* stipulates that if the declared effective date of a Notice to End Tenancy is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy is October 31, 2014. This tenancy will continue until October 31, 2014 unless it is ended prior to that date in accordance with a different section of the *Act*.

Although I have dismissed the Tenant's application to set aside the Notice to End Tenancy I find that his application has some merit, as the Landlord was attempting to end the tenancy on a date that did not comply with the legislation. I therefore find that he is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

I authorize the Tenant to retain \$50.00 from one rent payment in compensation for the fee paid to file this Application for Dispute Resolution.

I specifically note that the Landlord did not request an Order of Possession during this hearing and therefore an Order of Possession has not been granted.

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: April 08, 2014

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Residential Tenancy Branch

