



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNL, FF

For the landlord - OPL

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession for landlord's use of the property. The tenant applied to cancel the Two Month Notice to End Tenancy for landlord's use of the property and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the tenant entitled to have the Two Month Notice set aside?

### Background and Evidence

The parties agreed that this tenancy started on February 01, 2014 for a month to month tenancy. This was a verbal agreement between the parties and rent was agreed at \$675.00 per

month which is due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$300.00 on January 18, 2014.

The landlord testified that the tenant was served a Two Month Notice to End Tenancy (the Notice) on May 12 by express mail. The tenant received this on May 13, 2014. The Notice stated that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member (mother, father or child) of the landlord or the landlord's spouse.

The landlord testified that her spouse's sister will move into the bedroom of the unit and the remainder of the unit will be used by a yoga teacher as a studio. When the landlord's spouse's sister moves out the bedroom will be used by the landlord's daughter who at this time is 14 years old.

The tenant disputed the landlord's reason given on the Notice and testified that the Notice indicates that it has to be a close family member occupying the rental unit. The tenant questions the landlord's good faith intention in issuing the Notice under this ground. The tenant testified that the landlord's children are very young and would not be old enough to occupy the unit and the landlord cannot use it as a yoga studio as the living area is so small.

The landlord testified that her spouse's sister is in need and the unit is large enough for a yoga teacher to use it as a studio. The landlord requests that the Notice is upheld and seeks an Order of Possession for August 01, 2014.

The tenant seeks to have the Notice cancelled and seeks to recover the filing fee of \$50.00 from the landlord.

### Analysis

The *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move into the unit themselves, or allow a close family member to move into the unit; The *Act* stipulates that a close family member must be a mother, father or child of the landlord or the landlord's spouse. The landlord testified that her spouse's sister was in need and the landlord wanted this sister to occupy the bedroom in the unit and for the remainder of the unit to be used by a yoga teacher as a yoga studio.

I have considered the landlord's testimony and documentary evidence and it is my decision that the landlord's spouse's sister does not qualify as a close family member for the purposes of the Act when issuing a Two Month Notice to End Tenancy for this reason. I further find that using the rest of the unit as a yoga studio also does not qualify under the landlord's use of the property as the landlord or the landlords spouse or a close family member will not be occupying the rental unit but rather it will be used by a yoga teacher.

Consequently, the landlord's application for an Order of Possession must be denied.

The tenant's application to cancel the Notice is upheld. As the tenant has been successful with her application, the tenant is entitled to recover the \$50.00 filing fee from the landlord pursuant to s. 72(1) of the *Act*. The tenant may withhold the amount of \$50.00 from the next rent payment when it is due.

#### Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application is upheld. The Two Month Notice to End Tenancy dated May 12, 2014 is hereby set aside and the tenancy will continue.

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: July 16, 2014

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Residential Tenancy Branch

