



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49 (6);
- b) An Order that the landlord comply with the Act; and
- c) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated October 28, 2014 to be effective December 31, 2014 and the tenant confirmed it was served personally. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that they need in good faith to end the tenancy in order to convert the unit to a manager's unit? Or is the tenant entitled to any relief and if so, to recover filing fees?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the present tenancy commenced in June 2014 under a fixed term tenancy agreement to expire on May 30, 2015. Rent is \$350 a month including one parking space. The agreement states a security deposit of \$300 was paid but the landlord said there is uncertainty about that. Apparently this tenant and some of her family members worked with the tenant's daughter who was manager for some years. There were some disputes between the manager and the landlord and the manager left in August 2014. The landlord claims they never saw this tenancy agreement or others that were submitted as evidence when the files were transferred. The landlord claims that this is an unauthorized agreement so should not prevent them from reclaiming the unit to make the necessary conversion to an office for the manager or caretaker. However, they did acknowledge that the daughter who signed it was still in their employ in July 2014.

Included with the evidence is a copy of the Notice to End Tenancy, a submission from the tenant's advocate, several copies of the front pages of other leases and Notices of Rent Increases. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

The onus is on the landlord to prove on a balance of probabilities that they have good reason to end the tenancy under section 49 of the Act. I find the Notice to End Tenancy was served under section 49(6) (e) of the Act as the landlord intends to convert the tenant's unit for use by a caretaker or superintendent of the residential property and has all the necessary permits and approvals to do so.

However, as discussed with the parties in the hearing, section 49(2) which applies to section 49(6) of the Act states that a fixed term tenancy cannot be ended earlier than the date specified for the end of the tenancy which is May 30, 2015 in this case.

Although the landlord contended the tenancy agreement was unauthorized, I find the manager had the delegated authority in July 2014 to enter into tenancy agreements. I find also from examination of other agreements filed as evidence that she entered into many such agreements on behalf of the landlord. Therefore, I set aside the Notice to End Tenancy under section 49 of the Act.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy dated October 28, 2014 is successful and I find her entitled to recover filing fees for this application. The Notice to End Tenancy is hereby set aside and the tenancy is reinstated.

**I HEREBY ORDER the tenant may recover her filing fee by deducting \$50 from her rent for January 2015, thereby reducing her rent to \$300 for January 2015.**

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: December 16, 2014

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Residential Tenancy Branch

