



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNL OPL OLC

### **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;
- b) To protect the tenant's right to peaceful enjoyment contrary to section 28 of the Act;
- c) To order the landlord to comply with the Act; and
- d) To recover the filing fee for this Application.

Service:

The Notice to End Tenancy is dated October 27, 2014 to be effective January 1, 2015. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution 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, in good faith, require the property for their own use? Or is the tenant entitled to any relief?

Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

### **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 tenancy commenced in February 2010, it is a month to month tenancy, rent is \$1000 a month and a security deposit of \$500 was paid in February 2010. The landlord served a Notice to End Tenancy under section 49 of the Act.

The landlord said they need the tenant's suite for occupancy for her brother. Her brother had promised to move into the home when the mother turned 65 to help care for her and the mother is now turning 65. The tenant questioned the good faith of the landlord for he said there are 4 units, he lives in one, the landlord in another and there has been one empty for the past 5 years.

The landlord said there are not four legal suites. This is a home with 3 bedrooms, she has one, her mother a second and the third one is her office. The bedroom to which the tenant refers is often occupied by a friend who was ill and comes and stays from time to time. The tenant does not see her for she uses their front door. In any case, she said this room and bathroom is not a legal suite and has no appliances. Her brother needs his own suite if he is going to live there. The tenant contended that the landlord should not end the tenancy in winter and they had tried to end his tenancy last year too in winter. The landlord said that her correspondence included as evidence shows that they had been discussing the tenant's move out for some time and were giving him maximum time to find a place but as he had not done so, they served the Notice for their brother needs to move now.

The tenant said he had received a letter from the landlord's lawyer that the end of tenancy date was extended to January 31, 2015. The landlord agreed and said they recognized the Order of Possession would be effective January 31, 2015. It was pointed out to the landlord that they have an obligation to either give the tenant a free month's rent for January 2015 or refund it to him on or before January 31, 2015.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good reason under section 49 of the Act to end the tenancy.

I find the evidence of the landlord credible that the tenant's suite, being a self contained suite, is necessary for occupation by her brother so he will agree to move in and help with the care of her mother. I find her evidence is supported by letters from her mother, father and brother. I find evidence that the landlord has been requesting the tenant unsuccessfully to move out for some time.

For the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on January 31, 2015 as extended by the lawyer of the landlord. As requested in the hearing and pursuant to section 55 of the Act, I find the landlord entitled to an Order of Possession effective January 31, 2015.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on January 31, 2015. An Order of Possession is issued to the landlord effective January 31, 2015. No filing fee was involved.

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 09, 2014

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Residential Tenancy Branch

