



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

On December 16, 2014, the tenant's application for dispute resolution was dismissed and the landlord was granted an order of possession, pursuant to section 55 of the Act.

On December 18, 2014, the tenant made an application for review consideration, which was granted on the basis that they were unable to attend at the original hearing because of circumstances that could not be anticipated and were beyond their control. The Arbitrator ordered the parties to participate in a new hearing, and the original decision was suspended. The Arbitrator at the new hearing may confirm, vary or set aside the original decision.

This new hearing dealt with an Application for Dispute Resolution by the tenants to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, issued on October 30, 2014 (the "Notice").

Both parties appeared, gave affirmed 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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

### Preliminary issue

At the outset of the hearing the parties agreed, that the landlord AC, listed in the application should be removed from the style of cause. The landlord stated AC, is her son, not an owner, and has never had authority to act as her agent or enter into any agreements with the tenants. It appears any documents that were signed by AC were without any authority to do so and therefore invalid.

At the outset of the hearing the parties agreed that the tenant SM, listed in the application should be removed from the style of cause, as the landlord did not consent to SM, being added as a tenant. SM is an occupant under the Act.

### Issue to be Decided

Should the notice to end tenancy issued on October 30, 2014, be cancelled?

### Background and Evidence

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on December 31, 2014.

The reason stated in the Notice was that the rental unit will be occupied by the landlord's spouse or a close family member (father, mother or child).

The landlord testified that she owns a side-by-side duplex and lives in one of the units. The landlord stated that her daughter is currently working and living in a high density area and is having difficulties with the expense of living in a big city. The landlord stated that her daughter had planned to move back into the area and live in the attached accommodations and they would share the commuting costs of driving into the city.

The witness for the landlord testified that she is currently living and working in a big city and is struggling to maintain a lifestyle. The witness stated that she is 28 years old and needs to maintain her own space and asked her mother if it was possible for her to move into their rental accommodation. The tenant stated that the plan was that she would start the new year fresh and move in the premises on January 1, 2015, however, that has been delayed as result of the tenant's application.

The tenants had no questions for the witness.

The tenant testified that this is the first time they heard that the daughter was moving into the premises. The tenant stated they originally asked the landlord, however, that

information was not provided. The tenant stated that they do not have any evidence to the contrary.

### Analysis

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

I accept the evidence of the landlord and the landlord's witness, her daughter, that the landlord's daughter truly intends to use the premises as stated in the Notice. Therefore, I find the Notice, issued on October 30, 2014, is a valid Notice under the Act.

Therefore, I dismiss the tenant's application to set aside the Notice issued on October 30, 2014. The tenancy has ended in accordance with the Act.

As the tenant was not successful with his application the tenant is not entitled to recover the cost of filing the application from the landlord.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states:

#### Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and this Order may be filed in the Supreme Court and enforced as an Order of that Court. This order must be served on the tenant and may be filed in the Supreme Court.

Therefore the original decision and order made on December 16, 2014, are set aside and replaced with this decision and order.

### Conclusion

The original decision and order made on December 16, 2014, are set aside and replaced with this decision and order.

The tenant's application to set aside the 2 Month Notice to End Tenancy for Landlord's Use of Property, issued on October 30, 2014, 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: February 02, 2015

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Residential Tenancy Branch

