



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BERKELY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNL

### **Introduction**

This hearing dealt with an application by the tenant filed on May 05, 2015 to cancel two(2) - 2 Month Notice to End Tenancy For Landlord's Use of Property (the Notice) – one undated and unsigned and one dated May 01, 2015 – both with an effective dates of June 3, 2015.

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to this dispute and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. At the outset the landlord requested an Order of Possession. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice issued was a valid Notice issued, in good faith, for the stated reason(s).

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

Is the Notice to End tenancy valid and issued, in good faith for valid reason?  
Should the Notices to End be set aside?  
Is the landlord entitled to an Order of Possession?

### **Background and Evidence**

The landlord did not advance or provide any document evidence to this matter.

The tenant submitted a copy of a 2 Month Notice to End with an effective date of June 30, 2015, which they claim they received on May 01, 2015. The Notice to End was issued for the following reason;

*-the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse*

This Notice to End was not signed or dated; therefore the tenant returned the notice to

the landlord claiming it was not a valid notice. None the less, the landlord claims that as a director of the corporate landlord of this matter - they intend to occupy the unit personally.

On the same date of May 01, 2015, the landlord gave the tenant *a different* 2 Month Notice to End with an effective date of June 30, 2015. The Notice to End was issued for the following other reason;

*-the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.*

The landlord claims that after issuing the 1<sup>st</sup> Notice - in addition to occupying the rental unit themselves they are renovating the rental unit with new flooring, new paint, and updated features. The landlord claims the rental unit is dated and want to renovate it before they move in. The tenant testified that they have already repaired some of the apartment and updated some of the features at their own expense.

The tenant disputes the Notice to End on the basis neither of the two (2) Notices to End was issued in good faith as required by Section 49 of the Act.

### **Analysis**

In this type of application, the burden of proof rests with the respondent (landlord) to provide evidence that the Notice was validly issued for the stated reason.

**Section 49** of the Act – **Landlord's Notice: Landlord's use of property**, clearly states that a landlord may end a tenancy under the provisions of Section 49 of the Act by giving notice to end the tenancy.

In this matter, I find that the respondent may well have issued the 1<sup>st</sup> Notice to End in good faith and for a valid reason, but they issued the tenant a Notice which was unsigned, undated, and with an incorrect effective date, and as a result I find the Notice to End was not validly issued by the landlord, and is void. Therefore, **I Order** that the undated and unsigned Notice to End with an incorrect effective date of June 30, 2015 **is cancelled and of no effect.**

Given the above landlord's first Notice to End issued on the same date, I find the intention of the second Notice dated May 01, 2015 is rendered ambiguous and undermines it's good faith intention. In addition, I find the landlord failed to provide any document or other supporting evidence in support of the reason in the second Notice. I find that in the absence of supporting evidence, inclusive that the rental unit is required to be vacant so as to accommodate the stated reason of the landlord, **I Order** the Notice dated May 01, 2015 with the stated and incorrect effective date of June 30, 2015 **is cancelled and of no effect.**

The tenant is entitled to recover the filing fee for their application.

If necessary, the landlord is at liberty to issue a new and valid Notice to End for valid reason.

**Conclusion**

The tenant's application is granted. The landlord's two (2) Notices to End respecting this hearing are **set aside and are of no effect**. The tenancy continues.

**I Order** the tenant may deduct **\$50.00** from a future rent in satisfaction of the filing fee.

**This Decision is final and binding on both parties.**

*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: June 10, 2015

---

Residential Tenancy Branch

