



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNC, MNDC, OLC, ERP, SS, RR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act, (the “Act”), to allow a tenant more time to make and application to cancel a notice to end tenancy, to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”), for a monetary order for money owed or compensation for damage or loss, to have the landlord comply with the Act, to make repairs to the rental unit, suspend or set condition on the landlord’s right to enter and to recover the filing fee.

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 to me.

Rule Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice to End Tenancy. The balance of the tenant’s applications is dismissed, with leave to re-apply.

In a case where a tenant has applied to cancel a notice Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence and submission first, as the landlord has the burden of proving that the notice was issued for the reason given on the Notice.

### Preliminary Matter

At the outset of the hearing the landlord confirmed receipt of the tenant’s documentary evidence. The landlord indicated that they did not receive any digital evidence from the tenant.

The tenant confirmed that their evidence is related to the issued that I have dismissed with leave to reapply and not related to the notice to end tenancy.

As the tenant's evidence is not related to the issue that is to be decided today, I find it not necessary for me to consider service further.

At the outset of the hearing the tenant indicated that they did not receive the landlord's evidence.

The landlord testified that their evidence was sent to the service address provide by the tenant in their application, by registered mail.

The tenant indicated that they were house sitting for their mother.

In this case, the landlord served the tenant with their evidence by registered mail to the service address provided in the tenant's application. It was the tenant's responsible to ensure their mail was check regularly and make necessary arrangement for mail to be picked up on their behalf. I find the landlord has complied with the Act. Therefore, I allow the landlord's evidence to be submitted as evidence at today's hearing.

#### Issue to be Decided

Should the Notice, issued on August 31, 2015, be cancelled?

#### Background and Evidence

The tenancy began on June 30, 2014. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenant

The parties agreed the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, with an effective vacancy date of November 3, 2015.

The reason stated in the notice was,

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

The landlord testified that his family has been living in his parents one bedroom suite, which is now too small for his spouse and their two young children.

The landlord testified that they made a family decision to have his spouse's mother come from Vietnam for an extended period and help with the children. The landlord stated that they decided that they need to move to the property that they own, to accommodate their growing family needs.

The landlord testified that the home they own has an upper and lower unit and they gave notice to end tenancy to both tenants as they are using the entire property for their own use. The landlord indicated that the upper tenant has vacated and they are now waiting for this tenant to vacate the basement portion so they can take possession of the property.

The tenant testified that they do not have any evidence that the landlord does not intend to use the property for the reason stated, but stated that the landlord is a liar.

### Analysis

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

Were a tenant has filed to cancel a notice to end tenancy for landlord's use, the onus lies on the landlord to prove the landlord truly intends to use the premises for the purpose stated in the notice to end tenancy.

The evidence of the landlord was that he currently lives in a one bedroom suite in the basement of his parents' house, with his spouse and two young children. The evidence was that his family has outgrown the unit and his spouse's mother has come from Vietnam to stay for an extended period to help with the children. I find the landlord's testimony reasonable as the property they own is better suited for their growing family.

The tenant provided no evidence that would lead me to believe that the landlord does not intend to use the property for the stated reason.

Therefore, I dismiss the tenant's application to set aside the notice to end tenancy issued on August 31, 2015. The landlord was agreeable to extend the effective vacancy date to November 30, 2015.

As the tenant has paid rent for November 2015, the landlord is required to provide the tenant compensation pursuant to section 51 of the Act, on or before the extended effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement

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

In order to give effect to the above order, I grant the landlord an order of possession effective November 30, 2015, at 1:00pm, pursuant to section 62 and 55 of the Act..

### Conclusion

The tenant's application to set aside the 2 Month Notice to End Tenancy for Landlord's Use of Property, issued on August 31, 2015, 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: November 20, 2015

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Residential Tenancy Branch

