



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a 2 Month Notice to End Tenancy for Landlord's Use. All parties appeared and gave affirmed evidence. No issues regarding the exchange of evidence were identified. In particular, the landlords confirmed that they had not filed any written evidence in advance of the hearing.

### Issue(s) to be Decided

Is the 2 Month Notice to End Tenancy for Landlord's Use dated May 16, 2016, valid?

### Background and Evidence

This tenancy commenced over 18 years ago. The parties gave a number of different dates as the actual commencement date but all were 2000 or sooner. The current monthly rent is \$1778.00 and is due on the first day of the month.

The landlords' realtor testified that the landlords listed this property for sale on May 5, 2016 and accepted an offer on May 12. The realtor testified that the purchasers asked for vacant possession. The closing date for the sale is August 2, 2016.

On May 19 the landlords issued a 2 Month Notice to End Tenancy for Landlord's Use and left it in the mailbox at the rental unit. On May 25 they gave a second copy to the tenant's mother, who also resides in the unit. The tenant filed this application on May 27.

The reason stated on the notice is:

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

The landlords and their witnesses testified that the landlords are not doing any renovations or repairs to the unit before the closing date of the sale. The realtor said she thought the purchaser might be intending to demolish the house.

The tenant testified that she went to the municipal office and was advised that no permits for this property have been issued.

### Analysis

Section 49 of the *Residential Tenancy Act* allows a landlord to end a tenancy because they need possession for their own use in a variety of situations. The two that are relevant to this hearing are:

- The landlord has entered into an agreement in good faith to sell the rental unit; **and** all the conditions on which the sale depends have been satisfied; **and** the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser, or a close family member of the purchaser intends in good faith to occupy the rental unit. ("Purchaser" and "close family member" are defined in the section.)
- The landlord has all the necessary permits and approvals required by law; **and** intends in good faith to demolish the rental unit; renovate or repair the rental unit in a manner that requires the rental unit to be vacant; or intends to convert the unit to one of the other uses listed in the section.

Section 49(7) states that the notice to end tenancy for landlord's use must comply with section 52.

Section 52 sets out the criteria for a legally effective notice to end tenancy. One is that it states the reason for ending the tenancy.

In this case the reason set out on the notice to end tenancy is that the landlord is going to demolish the building or make renovations so extensive that the unit must be vacant. However, the landlords' evidence is that they are not going to do either of these things.

The 2 Month Notice to End Tenancy for Landlord's Use dated May 16, 2016 does not accurately set out the reason for ending the tenant and therefore does not comply with sections 49(8) and 52. It is not legally effective.

The landlords will have to serve the tenant with a new proper 2 Month Notice to End Tenancy for Landlord's Use. The two month time period starts again upon service of the new notice on the tenant.

Conclusion

- a. For the reasons set out above the 2 Month Notice to End Tenancy for Landlord's Use dated May 16, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.
- b. As the tenant was successful on her application she is entitled to reimbursement from the landlords of the \$100.00 fee she paid to file it. Pursuant to section 72(2) that amount may be deducted from the next rent payment due to the landlords.

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 30, 2016

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Residential Tenancy Branch