



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPT, OLC, O, MNDC, LRE, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy an order of possession, an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; restrict the landlord's access to the rental unit; and a monetary order.

The hearing was conducted via teleconference and was attended by both tenants; the landlord; and her son.

At the outset of the hearing I confirmed that the tenants had possession of the rental unit and as such they have no requirement to obtain an order of possession. However, the tenants are concerned the landlord is trying to end the tenancy and are seeking to ensure the landlord follow any and all requirements under the *Act* and comply with a previous decision between these parties issued on January 5, 2016. I amend the tenants' Application to exclude the order of possession.

The tenants also indicated that they had filed another Application for Dispute Resolution scheduled to be heard on July 20, 2016. The tenants indicated the matters in that Application include canceling a 2 Month Notice to End Tenancy for Landlord's Use of Property; additional compensation for the same and ongoing issues identified in the Application for this hearing; and a rent reduction.

Both parties agreed to allow the tenants' to amend this Application to include all of the items in the tenants' Application for the July 20, 2016 hearing. As the landlord had submitted into evidence for this hearing a copy of the 2 Month Notice I have accepted this amendment. To be clear, this means that the hearing scheduled for July 20, 2016 is cancelled and the total amount of compensation sought by the tenants is \$300.00.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is

dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order requiring the landlord comply with the *Act*, regulation and tenancy agreement; to a monetary order for compensation for ongoing non-compliance with the *Act* and harassment; to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; and a rent reduction and to recover the filing fee from the landlords for the cost of both Applications for Dispute Resolution, pursuant to Sections 28, 29, 49, 54, 67, 70, and 72 of the *Residential Tenancy Act (Act)*.

Should the tenants are unsuccessful in seeking to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

### Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement for a 1 year and 16 day fixed term tenancy beginning on July 15, 2014 that converted to a month to month tenancy on August 1, 2015 for a monthly rent of \$1,450.00 due on the 1<sup>st</sup> of each month with a security deposit of \$725.00 and a pet damage deposit of \$725.00 paid;
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on May 29, 2016 with an effective vacancy date of July 29, 2016 citing the rental unit would be occupied by the landlord or a close family member.

There is no dispute between the parties that:

- The landlord issued the tenants a 2 Month Notice to End Tenancy for Landlord's Use of Property on September 18, 2015 with an effective vacancy date of November 30 2015 citing the rental unit would be occupied by the landlord or a close family member;
- There was a hearing conducted on December 8, 2015 with a decision written on January 5, 2016 cancelling the Notice because the Arbitrator found the September 18, 2015 Notice not valid because the landlord's son would only be

visiting his mother for a short period of time and it would not be his permanent home and the landlord did not make it clear that the rent paid for December 2015 was accepted for use and occupancy only;

- The landlord issued to the tenants a letter on March 5, 2016 stating that her son would be home on June 5, 2016. The letter went to say that the letter was a “three months notice” and that the tenants would “stay until May 31, 2016”; and
- The landlord issued another 2 Month Notice to End Tenancy for Landlord’s Use of Property on May 29, 2016 as noted above.

The tenants submitted that despite the results of the January 5, 2016 decision the landlord has continued to bother them about moving out incessantly. They state that the landlord has accosted them on several occasions yelling at them to move out of the unit.

The tenants submitted the landlord gave them the letter of March 5, 2016 noted above and continued to bother them constantly about moving out. Then on May 29, 2016 the tenants received the second 2 Month Notice as noted above.

The landlord submitted that it was her house and she needs the tenants out. She confirmed that the circumstances are the same as they were at the previous hearing. Specifically the landlord confirmed that she needed the rental unit for her son’s visits when he stays with her during his breaks and holidays.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

*Res judicata* is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black’s Law Dictionary, 7<sup>th</sup> Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties.

In the case before me I find that the decision of January 5, 2016 granted a final and binding decision on the parties that the landlord could not end the tenancy for the reason that the unit would be occupied by a close family member when that family member was the landlord’s son and he was only using it for visiting.

As the landlord has submitted to this hearing that the reason for ending the tenancy is for her son to stay with her when he is visiting, I find that the circumstances for which

the landlord is attempting to end the tenancy are exactly the same as addressed in the January 5, 2016 decision. As such, I find these matters are considered *res judicata*

As a result, I find the 2 Month Notice to End Tenancy for Landlord's Use of Property is not enforceable and must be cancelled.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

I am satisfied from the tenant's testimony that the landlord has continued to bother and harass them about moving out of the rental unit despite the decision of January 5, 2016. I find these actions constitute a breach of the covenant of quiet enjoyment required under Section 28.

As a result of this breach, I find the tenants have suffered a loss to the value of their tenancy. I find the amount of the total claim of \$300.00 to be reasonable compensation for this loss of value.

I also order the landlord to cease all harassing behaviour towards the tenants.

While I recognize both parties have the right to communicate with each other to deal with issues that may arise during the tenancy I will, not at this time, restrict any access to the rental unit. I also will not, at this time, order a rent reduction. However, I caution the landlord that should the landlord continue any harassing behaviour the tenants would be at liberty to file a claim for further compensation and/ or a future and ongoing rent reduction.

### Conclusion

Based on the above, I order the tenancy will remain in full force and continue until such time as it ends in accordance with the *Act*.

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$500.00** comprised of \$300.00 compensation and the \$100.00 fee paid by the tenants for this application and the application for the July 20, 2016 hearing.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: July 8, 2016

---

Residential Tenancy Branch