



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Introduction

This hearing was convened in response to an Application for Dispute Resolution in which the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the fee for filing this Application.

The Tenant stated that on June 03, 2016 the Application for Dispute Resolution, the Notice of Hearing, and a copy of the Notice to End Tenancy were sent to the Landlord, via registered mail. The Agent for the Landlord stated that the Landlord received these documents, although he is not certain how they were received. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

## Issue(s) to be Decided

Should a Two Month Notice to End Tenancy for Landlord's Use of Property be set aside?

## Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in 2010;
- the Tenant currently pays rent of \$400.00 per month;
- rent is due by the first day of each month;
- on May 27, 2016 the Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, which was dated May 27, 2016;
- the Two Month Notice to End Tenancy that was served on May 27, 2016 declared that the tenancy was ending because the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse;
- the Two Month Notice to End Tenancy that was served on May 27, 2016 declared that the Tenant must vacate the rental unit by July 31, 2016; and
- the Landlord has previously served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property that declared the Landlord wished to end the tenancy because the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse.

The Agent for the Landlord stated that the Two Month Notice to End Tenancy that is the subject of these proceedings was served because:

- he and his girlfriend intend to move into the rental unit in August of 2016;
- this rental unit was his family home; and
- he intends to convert the two unit residential complex into a single family dwelling, part of which will be used for business purposes.

The Advocate for the Tenant stated that the Two Month Notice to End Tenancy for Landlord's Use of Property that was previously served to the Tenant was the subject of a dispute resolution hearing on June 20, 2016. The Agent for the Landlord stated that he knows the Two Month Notice to End Tenancy for Landlord's Use of Property that was previously served to the Tenant was the subject of a dispute resolution hearing, although he is uncertain of the date of that hearing.

The Advocate for the Tenant stated that the Two Month Notice to End Tenancy for Landlord's Use of Property that was previously served to the Tenant was dismissed on its merits at the dispute resolution hearing on June 20, 2016. The Agent for the Landlord stated that he is not certain why the Two Month Notice to End Tenancy for Landlord's Use of Property was dismissed, although he believes it was related to inaccurate information on the Notice.

The Advocate for the Tenant provided the file number for the hearing on June 20, 2016, which appears on the first page of this decision. Both parties consented to my viewing the decision from those proceedings prior to rendering a decision in this matter. I have reviewed the decision of June 20, 2016 in which the Arbitrator:

- did not set aside a Two Month Notice to End Tenancy, dated April 29, 2016, because of inaccurate information on the Notice;
- was told by the Landlord that the Landlord's son and his son's girlfriend wished to occupy the entire rental unit;
- was told that the Landlord's son and girlfriend would be residing in the upper suite and the Tenant's suite would be occupied or used as the Landlord's business office and storage;
- concluded that there was insufficient evidence to prove the Tenant was served with the Two Month Notice to End Tenancy because the Tenant's rental unit would be occupied by the Landlord's son;
- concluded that the Landlord had an ulterior motive to end the tenancy as he intended to have the Tenant's rental unit occupied by a business office, which is different reason than what is stated on the Two Month Notice to End Tenancy; and
- cancelled the Two Month Notice to End Tenancy that was dated April 29, 2016.

### Analysis

Where an issue has been brought before a court of competent jurisdiction and there has been a final judgment on the matter, the principal of res judicata precludes continued litigation of the matter on the same issues between the same parties.

The Landlord and the Tenant in this Application for Dispute Resolution are identical to the parties in the hearing on June 20, 2016. The Two Month Notice to End Tenancy that is the subject of this dispute was served for the exact same reason as the Two Month Notice to End Tenancy that was the subject of the dispute resolution hearing on June 20, 2016. The decision rendered after the hearing on June 20, 2016, in which the Two Month Notice to End Tenancy was set aside, was final and binding.

I therefore find that the principal of res judicata applies and I refuse to determine the merits of the Two Month Notice to End Tenancy that is the subject of these proceedings. The Landlord does not have the right to serve a Notice to End Tenancy for reasons that have been previously considered by a Residential Tenancy Branch Arbitrator with hopes that a different Arbitrator will reach a different conclusion on the same issues.

I find that the Tenant's Application for Dispute Resolution has merit and I find he is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Two Month Notice to End Tenancy, dated May 27, 2016, is set aside.

I authorize the Tenant to reduce one monthly rent payment by \$50.00 in compensation of the fee paid to file this Application for Dispute Resolution.

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 07, 2016

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Residential Tenancy Branch