



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes CNL FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing.

### Issues

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background & Evidence

The tenancy for this condominium unit began on April 1, 2011. The current monthly rent of \$1700.00 is payable on the 1<sup>st</sup> day of each month.

The landlord served the tenant with the 2 Month Notice dated December 23, 2016. A copy of the Notice was not on file but the landlord testified that the Notice was issued on the grounds that the landlord's sister intends to occupy the rental unit.

### Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant

makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

Pursuant to section 49(3) of the Act, a landlord may end a tenancy if the landlord or a "close family member" of the landlord intends in good faith to occupy the rental unit. Under this section, a "close family member" includes the landlord's parent, spouse or child; or the parent or child of the landlord's spouse. The definition of "close family member" does not extend to siblings of the landlord.

Accordingly, the 2 Month Notice to End Tenancy dated December 23, 2016 is hereby cancelled and of no force or effect.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

### Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice, dated December 23, 2016, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: January 27, 2017

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Residential Tenancy Branch