



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNL FF

### **Introduction**

Both parties attended the hearing and gave sworn testimony. They confirmed the Two Month Notice to End Tenancy dated February 27, 2017 to be effective April 30, 2017 was served personally. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49; and
- b) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that they are ending the tenancy in order to have the property for their own use? Or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced August 2011, it is now a month to month tenancy, rent is \$1500 a month and a security deposit of \$850 was paid. The landlord served a Notice to End Tenancy for the following reason:

*The rental unit will be occupied by the landlord or the landlord's close family member.*

The tenant said the landlord intended to sell the property as she was told this in the Fall of 2016 and a realtor walked through it in February 2017. A closing date to accommodate the school year was discussed. Then the landlord served this two month notice with a sheriff on February 27, 2017. The tenant requests that the Notice be set aside and cancelled as the landlord or their family will not be occupying the home.

The landlord said she has financial difficulties in maintaining rental properties. This home is in poor condition as the realtor pointed out. When it was not selling, they formed the intention of renting it to their adult children who would assist them in fixing it up so they served this Notice to End Tenancy. However the house sold. It is a condition of sale that they give vacant possession but the new owner does not intend to occupy the home either. The landlord said if the sale does not complete because they can't give vacant possession, their adult children will move into the home.

The landlord already gave one month's free rent for April but the tenant said they have the cheque ready if their tenancy is reinstated. The landlord said they often pay rent late. I advised her to consult section 46 and 47 regarding rental obligations.

Included with the evidence is a copy of the Notice to End Tenancy, the MLS listing, letters regarding showing times, texts from the landlord on March 3, 2017 stating the house was sold and a late submission from the landlord explaining their circumstances and intentions.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

The onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the evidence of the tenant credible that the Notice to End Tenancy dated February 27, 2017 does not state the true reasons for the landlord ending the tenancy. I find the credibility of the tenant is supported by the evidence of the MLS listing showing the house for sale, the realtors appointments and the fact that the house has been sold. While the Notice may have expressed an alternate intention of the landlord provided she did not sell the house, I find section 49 of the Act provides that a landlord may end the tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

I find when the landlord served the Notice, they had already consulted realtors to list the property for sale and the property did, in fact, sell "with conditions" shortly after the Notice was served. I find the Notice to End Tenancy dated February 27, 2017 did not state the primary intentions of the landlord for ending the tenancy. Therefore, I set aside and cancel the Notice.

As discussed with the parties, the tenant is obligated to now pay rent for April 2017 as the tenancy is continuing.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The Notice to End Tenancy dated February 27, 2017 is hereby set aside and cancelled. The tenancy continues. I find the tenant entitled to recover their filing fee.

**I HEREBY ORDER that the tenant may recover their filing fee by deducting \$100 off their next rental payment.**

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: April 05, 2017

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Residential Tenancy Branch