



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL MNDC ERP RP OLC LRE

### 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 (the 2 Month Notice);
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- authorization to change the locks and/or to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony, to present evidence and to make submissions.

### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the issue of whether or not the landlord had grounds to issue the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues

identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Part of the tenant's application was for repairs to the rental unit for which the parties already had a previous hearing on and the landlord was ordered to make various repairs. The tenant was advised that she need not reapply for the same repair orders previously ordered. The tenant was advised that an application to reduce rent for repairs not completed as ordered would be more appropriate.

### Issues

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

### Background & Evidence

The rental unit is a 200 square foot bachelor suite in a residential house. The tenancy began on March 20, 2016. The current monthly rent is \$350.00 and is payable on the 1<sup>st</sup> day of each month.

The landlord served the tenant with a 2 Month Notice on April 2, 2017.

The landlord's representative testified that the landlord intends to move his brother (the landlord's grandson) into the rental unit.

The tenant is disputing the 2 Month Notice on the grounds that it was not issued in good faith. The tenant submits that the landlord only issued the Notice to End Tenancy after the landlord was ordered to make various repairs to the rental unit in a previous decision.

### 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 who is an individual may end a tenancy in respect of a rental unit 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**" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

A grandchild is not included in the definition of a close family member.

Accordingly, the 2 Month Notice to End Tenancy dated March 31, 2017, is hereby cancelled and of no force or effect.

### Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice, dated March 31, 2017, 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: May 08, 2017

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Residential Tenancy Branch