



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, CNR, FF

### Introduction

The tenant applies to cancel a two month Notice to End Tenancy for landlord use of property dated April 25, 2017. By amendment to his application he also seeks to cancel a ten day Notice to End Tenancy for unpaid rent dated May 25, 2017.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the landlord have a good faith intention that his mother and sister take occupation of the premises? Is the ten day Notice a valid Notice?

### Background and Evidence

The rental unit is a bedroom in upper portion of a house owned by the landlord's mother Ms. B.N., who attended the hearing. The tenant shares the upper accommodation with two other tenants of the landlord. The landlord himself lives in a two bedroom suite below. He rents the second bedroom of that suite to a fourth tenant, who shares the facilities located in that suite with him.

In early April of this year the landlord issued the first of two two-month Notices to the tenant. He indicated to the tenant that his sister intended to move in. The tenant pointed out that the landlord's sister was not a "close family member" as required by s.49 of the *Residential Tenancy Act* (the "Act").

The tenant recorded this conversation with the landlord and it appears that landlord uttered words to the effect "then I'll move my mother in."

The tenant is of the view that this utterance shows bad faith and that the landlord wants him out so as to facilitate sale of the home.

The first Notice was withdrawn. The tenant says that in consideration of having issued an improper Notice the landlord waived payment of May rent in writing. The tenant produces a photocopy of a photograph of the document. The landlord denies the agreement and produces examples of his signature to indicate that the tenant's document is a forgery.

The landlord testifies that his sister and mother live together in another city. Their tenancy agreement expires in August. His sister is finished her schooling and desires to return to this house, where the family had earlier lived together for over ten years. He says his mother works in this city and wishes to move back to be closer to her work. He provides a signed statement from his mother's employer to that effect.

The landlord's mother, the owner provided a signed statement of her desire to move back into this home. She confirmed the truth of the statement under oath at this hearing.

### Analysis

In my view the statements uttered by the landlord when confronted with the fact that his sister was not a "close family member" with the meaning ascribed by s. 49 are not inconsistent with his intention that his mother and sister were intending to occupy the premises.

He swears that the home is not listed for sale and there is no intention to sell within the next couple of years.

It is to be noted that one of the tenant's upstairs roommates has also been given a two month Notice and the other has signed a mutual agreement to end the tenancy. At the same time, the landlord's downstairs roommate will be staying. She has not been given a Notice. This is consonant with the landlord's stated intention that his mother and sister occupy the upper portion of the house. If it was his intention to sell, it seems likely that the downstairs roommate would have been given a Notice to End Tenancy as well.

For these reasons I find that the two month Notice is a valid Notice and will result in the ending of this tenancy on July 1, 2017.

This portion of the decision was rendered orally at hearing. The matter of the ten day Notice was reserved for the written decision.

It is agreed that the tenant did not pay the May rent. The tenant paid and the landlord accepted the June rent.

The burden of proving that the May rent was waived falls to the tenant because he is the one who alleges it. On the evidence before me, the tenant has not proved on a balance of probabilities that the May rent was waived. It is not clear why a landlord withdrawing a Notice to End Tenancy would feel obliged to pay his tenant anything. I find that it was not waived and that it came due on May 1. The ten day Notice was therefore a proper Notice.

However, the landlord accepted rent after the Notice and I find that he reinstated the tenancy by doing so. As a result, the ten day Notice is of no effect to end the tenancy earlier than the two month Notice.

The landlord is owed May rent. At the same time, by operation of s. 51(1) of the *Act* the tenant, having received a two month Notice, is entitled to be compensated the equivalent of one month's rent. I find that the May rent and the s. 51(1) compensation offset each other.

Conclusion

The tenant's application is dismissed. This tenancy will end on July 1, 2017 and pursuant to s. 55 of the *Act* the landlord will have an order of possession.

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: June 29, 2017

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Residential Tenancy Branch