



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MND

### Introduction

On June 28, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession, and for a monetary order for damage to the unit or property. The matter was set for a conference call hearing.

The Landlord and Tenant attended the teleconference hearing. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Landlord is seeking an order of possession based on a 2 Month Notice and also requests monetary compensation for damage.

An Arbitrator has the discretion to dismiss unrelated claims with or without leave to reapply. Since the primary issue to determine in this hearing is whether or not the tenancy is ending, I dismiss the Landlord's monetary claims with leave to reapply.

Other than a copy of the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated May 30, 2017, the Landlord did not provide any documentary evidence.

The Tenant provided 36 pages of documentary evidence; however, she testified that she did not serve a copy of all the documents to the Landlord.

### Issue to be Decided

- Is the Landlord entitled to an order of possession based on issuance of a 2 Month Notice To End Tenancy For Landlord's Use Of Property?

### Background and Evidence

The parties provided opposing testimony on the details of the tenancy agreement. The Tenant testified that the tenancy began approximately eight years ago. She testified that she has always renewed the tenancy for a fixed term. She testified that the Landlord provided her with a tenancy agreement to sign and return to the Landlord. She testified that she signed the agreement and returned the agreement to Landlord's son Mr. S.D. She testified that the tenancy agreement is a two year fixed term agreement that began on October 1, 2016, and continues to October 31, 2018.

The Tenant provided a copy of the fixed term tenancy agreement which contains signatures of the Tenant and Landlord.

The Landlord's agent Mr. M.D. testified that there is no written tenancy agreement in place. He testified that he became the agent for his mother as of May 30, 2017. He testified that the Tenant previously dealt with tenancy issues with his brother, but his brother is no longer authorized to act on behalf of his mother, the Landlord.

The Landlord's agent testified that the tenancy is a month to month agreement. He testified that he has not received any rent payments from the Tenant in over one year. Later in the hearing the Landlord's agent testified that the Tenant has been paying rent each month.

The Landlord's agent testified that on June 27, 2017, he asked the Tenant to direct all future rent payments to himself and his mother.

The Landlord issued a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated May 30, 2017. The reason checked off by the Landlord within the Notice is:

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

The 2 Month Notice states the Tenants must move out of the rental unit by July 31, 2017. The Notice informed the Tenant of the right to dispute the Notice within 15 days after receiving it.

The Landlord seeks an immediate order of possession.

### Analysis

A Landlord is defined under the *Act* to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord:

- permits occupation of the rental unit.
- exercises powers and performs duties under this *Act*, the tenancy agreement.
- exercises any of the rights of a landlord under a tenancy agreement or this *Act* in relation to the rental unit.
- a former landlord, when the context requires this.

The Residential Tenancy Branch Policy Guideline #30 Fixed Term Tenancies is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

*A landlord cannot give notice for owner occupancy or purchaser occupancy that will have the effect of ending a fixed term tenancy before the end of the fixed term. If a landlord wishes to end the tenancy for reasons such as owner occupancy or purchaser occupancy, the landlord must serve a proper Notice to End Tenancy on the tenant*

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

The Tenant entered into a fixed term tenancy agreement with the son of the property owner. I find that the owner's son was the Landlord when he permitted the occupation of the rental unit and exercised powers and performed duties under the *Act* and tenancy agreement.

While the Landlord's agent indicates that the owner no longer wants her other son Mr. S.D. to act as her agent, I find that the fixed term tenancy agreement made with the Tenant is valid and must be honored.

I find that the Landlord cannot give notice to end the tenancy for owner occupancy earlier than the end of the fixed term tenancy.

The Landlord's 2 Month Notice To End Tenancy For Landlord's Use Of Property dated May 30, 2017, is an invalid notice and is set aside.

The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The parties entered into a fixed term tenancy agreement and the Landlord cannot give notice to end the tenancy for owner occupancy before the end of the fixed term.

The 2 Month Notice To End Tenancy For Landlord's Use Of Property dated May 30, 2017, is set aside.

The tenancy will continue until 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: September 18, 2017

---

Residential Tenancy Branch