



# 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 Notice to End Tenancy dated December 1, 2017 to be effective February 28, 2017 was served personally. The effective date on the notice is automatically corrected to February 28, **2018** pursuant to section 53 of the Act. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution 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 need to end 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 1, 2016, it is now a month to month tenancy, and rent is \$1000 a month. There is no security deposit for the tenant's asked to apply it to rent in August 2017. The landlord served a Two Month Notice to End Tenancy for landlord's use of the property.

He gave evidence that this home is close to his present home where he currently resides. His wife and he are having marital difficulties and he needs to move nearby where he can still see his children and give some support to his wife. He believes his wife needs her own space at the moment if their marriage is to survive.

In their application, the tenants said that the landlord's girlfriend's sister was going to move in so this Notice would not be valid. They provided no supporting evidence for this, other than their own statement. They said they did not want to move during the school year but the landlord said he was unable to wait any longer to change residences for himself. There was some discussion of unpaid bills. I advised the parties that the landlord had the right to make an application to claim for any unpaid bills and damages before or after the tenants moved.

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

**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. Section 49(3) of the Act provides that: *A landlord who is an individual may end the tenancy early in respect of the rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

I find the evidence of the landlord credible that he intends to occupy the rental unit himself due to his marital situation at present. Therefore, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on February 28, 2018 as automatically corrected under section 53 of the Act. Section 55 of the Act provides that when the tenant's application to cancel the Notice to End Tenancy is unsuccessful, the arbitrator must issue an Order of Possession to the landlord.

**Conclusion:**

I dismiss the application of the tenant and find them not entitled to recover the filing fee due to lack of success. I find the landlord entitled to an Order of Possession effective February 28, 2018 (as corrected).

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 16, 2018

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Residential Tenancy Branch