



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property.

The tenant attended the hearing and gave affirmed testimony however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call. The tenant testified that the landlord was served with notice of this hearing (the Hearing Package) on December 16, 2017 by registered mail and has provided a photograph of a Canada Post cash register receipt and a Registered Domestic Customer Receipt addressed to the landlord. The date is not readable however I accept the affirmed testimony of the tenant, and I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?

### Background and Evidence

The tenant testified that this month-to-month tenancy began in mid-April, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$1,040.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlord is the tenant's

son-in-law and did not collect a security deposit or pet damage deposit from the tenant, and no written tenancy agreement exists. The rental unit is a basement suite, and the tenant's daughter currently resides in the upper level of the home.

The tenant further testified that the landlord and the tenant's daughter are separated, and the landlord had told his spouse that the landlord wanted the tenant to pay \$500.00 per month more or he would evict the tenant and have another tenant move in and pay more for rent each month. The landlord does not reside on the rental property.

The landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property by placing it in the mailbox on November 27, 2017. The tenant testified that the original document was sent to the Residential Tenancy Branch by regular mail, but a copy has not reached me before the hearing. The tenant testified that it was dated November 27, 2017 and contained an effective date of vacancy of January 31, 2018, and that the reason for issuing it states that the rental unit will be occupied by the landlord or a close family member of the landlord or the landlord's spouse.

### Analysis

Where a tenant disputes a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act* and that the landlord has good faith intent to use the rental unit for the purpose contained in the notice. In this case, the landlord has not attended the hearing to testify as to why it was issued, and the rental unit is already occupied by a close family member of the landlord or the landlord's spouse.

In the absence of any testimony or evidence from the landlord, I cannot be satisfied that any good faith intent exists, and I cancel the notice.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee, and I hereby grant a monetary order in favour of the tenant in that amount. The tenant may reduce rent for a future month by that amount, or may otherwise recover it.

### Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated November 27, 2017 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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 23, 2018

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Residential Tenancy Branch