



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNL OPL LRE FF

### **Introduction**

Both parties attended the hearing and gave sworn or affirmed testimony. The Two Month Notice to End Tenancy is dated December 23, 2017 to be effective March 1, 2018 and the tenant confirmed it was served personally. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated December 27, 2017 by registered mail 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;
- b) To set limits on the landlord's entry pursuant to section 29; and
- c) To recover the filing fees.

### **Issues:**

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 in August 2014, it is now a month to month tenancy, rent is \$1555.50 a month and a security deposit of \$750 was paid. The landlord served a Notice to End Tenancy for the following reasons:

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

The landlord and his wife attested to the fact that they need to downsize, partly because their children have grown and left home and partly because they are getting older and the financial aspects of managing this house are very difficult. They provided numerous financial statements and analysis to support their statements. They said they are residing in a much larger home and have been able to rent it and its secondary suite for March 1, 2018 so they want the tenant to leave as they are moving into this smaller, less valuable home. In this way, they hope to have to work less to maintain themselves.

In a previous hearing in November 2017, they had served a similar Notice. They said that the intention at that time had been for their son and friend to move into the tenant's home and take over all the financial responsibilities of it. However, when they did not succeed in the hearing, the son and friend moved on and now rent their own condo. In the past, their children had also contributed to the household income but they now have their own lives and live elsewhere. All of these factors contributed to their decision to occupy this home themselves. If the tenant is unsuccessful they request an Order of Possession effective March 1, 2018 as they have to move out of their present home at that time.

The tenant referred to the previous decision on November 29, 2017 and said it was legal and binding and his tenancy continued. I pointed out that it only related to the previous Notice to End Tenancy and this hearing was on the most recent Notice. The tenant has several children and he said this is a huge disruption for them and for the family. He disputed the landlord's financial statements and said there was no proof that the landlord had been losing money on the rental. He said he paid his rent on time. He said there was no evidence that the landlord had had the burden of the renovation payments and likely insurance covered much of that. He believes the financial difficulty is exaggerated so the landlord can rent for more money. The tenant also alleged the landlord had been irritating them and disturbing their peaceful enjoyment, firstly by demanding they pay more rent than the legal limit, and then by telling them they were going to take back one room which has entry doors to both the suite and their home. He said the landlord did a renovation because of ice damage and their children and they suffered through it. One child has asthma.

The landlord said they offered for the tenants to move during the renovation but they wanted to stay and pay less. They told the tenant in July 2017 of their difficulties with finances and the tenant said he would pay more rent 'a gentleman's agreement', and then he denied this and agreed only to the legal limit of rent increase. Their youngest son then suggested he and a friend could live in the home and assume the finances but they were unsuccessful at obtaining possession at the previous hearing so they moved

on. They had a relative living in the suite who could have used the second room adjoining and pay more rent but the tenant refused this. In every case, the landlords said they had obeyed the Act in not raising the rent above the legal limit when the tenant disagreed, and in not taking the room which adjoins the suite and the main house when the tenant refused. They said they had exhausted options for coping with finances and then decided to occupy the home themselves as they needed to downsize when their children moved on. They rented out their own home for March 1, 2018. The tenant confirmed he had received free rent for February 2018 pursuant to the second 49 Notice and compensation.

Included with the evidence is the Notice to End Tenancy, copies of leases signed to occupy the landlord's present home, many financial statements, tenancy agreements from 2014 onward for this tenancy and some photographs. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they or a close family member intend in good faith to occupy the home. I find the evidence of the landlord credible that they intend to occupy the home themselves as they want to downsize.

While the financial statements may not be entirely relevant, I find they support the landlord's evidence that he is finding it difficult to maintain his larger home as their sources of income have changed. I find their testimony today is consistent with the last hearing where the son was giving evidence but now has moved on.

Although ending this tenancy has serious consequences for the tenant, section 49 of the Act states a tenancy may be legally ended if the landlord or a close family member intends to occupy the home themselves. I find the weight of the evidence is that the landlord needs this home to occupy by March 1, 2018 as he has rented his current home to other tenants for that date (leases in evidence). I find the tenancy is legally at an end on March 1, 2018 pursuant to the section 49 Notice.

I find insufficient evidence of harassment and as the tenancy is legally ended, I find it moot to order the landlord to stop harassing the tenant. While there were disagreements concerning a rent increase and reclaiming of a room, I find the tenant successfully asserted his rights in these disagreements. However, the landlord is

required to obey section 29 of the Act regarding Notice of entry to the home and to protect the tenant's right to peaceful enjoyment until the end of the tenancy.

**Conclusion:**

For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy and find they are not entitled to recover their filing fee. I find the tenancy is terminated on March 1, 2018. Section 55 of the Act provides a landlord must be issued an Order of Possession if the tenant's application is denied and the Notice upheld. I find the landlord entitled to an Order of Possession effective March 1, 2018.

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: February 15, 2018

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Residential Tenancy Branch