



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

The tenant applies to cancel a two month Notice to End Tenancy received January 27, 2018. The Notice alleges that the landlord or a close family member intends to occupy the rental unit.

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 relevant evidence presented during the hearing show on a balance of probabilities that the landlord has a good faith intention to occupy the tenant's rental unit?

### Background and Evidence

The rental unit is a one bedroom suite in the attic of a home owned by the landlord.

The landlord lives in a portion of the basement. There is a second rental unit taking up the main floor of the house. There is third rental unit located in the basement and with which the landlord's portion shares a bathroom.

There is a dispute about whether or not there is a written tenancy agreement. However, the parties agree that the tenant moved in in May 1999, the current rent is \$905.00 and that the landlord holds a \$250.00 security deposit.

The landlord testifies that she has been occupying the basement unit for many years but it is small and not suitable for long term, comfortable habitation. It has no bathroom, no stove and no running water. She has spent much of her time away. Particularly, she says, she stays on the Sunshine Coast at a family member's home.

She is 66 years old and her medical condition is requiring her to make frequent trips in the city. It is difficult to do so from the Sunshine Coast as it involves a lengthy drive and a ferry trip. Presently her niece has taken up occupancy of the landlord's basement area.

She says that her current area in the basement is not commensurate with her obligation to young students she assists.

The tenant says that when he received the Notice the landlord told him her niece would be moving in and the law says only the landlord or a close family member, not a niece, has to be moving in. He has found another place to live; his late mother's accommodation, but can't reasonably move in until May 1.

### Analysis

Section 49 of the *Residential Tenancy Act* (the "*Act*") permits a landlord to end a periodic tenancy in the circumstance where the landlord or a close family member intends in good faith to occupy the rental unit. The tenant is correct that "close family member" as defined in the *Act* does not include a niece.

The landlord gives a variety of uncontradicted and rational reasons why her circumstances require her to move into this rental unit. I accept her testimony that when she told the tenant that her niece was moving in, she meant her niece was moving into the basement (which she did only two weeks ago) and not into the attic. I find that she gave the Notice in good faith and for a valid reason.

In result, I uphold this Notice and find that it has resulted in this tenancy coming to an end as of the effective date of April 1, 2018.

Accordingly, and pursuant to s. 55 of the *Act*, the landlord is entitled to an order of possession.

The tenant paid the February and March rents but has withheld the April rent on the ground that it is the one month's free rent he is entitled to under s. 51 of the *Act* on being given a two month Notice to End Tenancy.

In all the circumstances of this case I grant the landlord an order of possession effective at one o'clock in the afternoon on May 1, 2018.

Conclusion

The tenant's application is dismissed.

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: April 12, 2018

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Residential Tenancy Branch