



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 49 of the *Residential Tenancy Act* (the “Act”).

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other’s evidence.

### **Preliminary Matter**

The Tenant claims an order for the Landlord’s compliance in relation to the provision of rent receipts and use of proper forms and notices for rent increases.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claim for an order for compliance is not related to the matter of whether the tenancy will end, I dismiss the claim with leave to reapply. I caution the Landlord to follow the Act in relation to providing receipts for rent paid in cash and for giving a rent increase.

### **Issue(s) to be Decided**

Is the Tenant entitled to a cancellation of the notice to end tenancy?

### Background and Evidence

The following are agreed facts: the tenancy started on November 15, 2017. Rent of \$1,260.00 is payable on the last day of each month. The Landlord gave the Tenant a two month notice to end tenancy for landlord's use dated July 31 2022 (the "Notice"). The Notice sets out two reasons for ending the tenancy.

The Tenant states that about 3 months prior to receiving the Notice the Landlord had asked for a rental increase that was greater than the allowable amount. The Tenant states that at the time the Tenant only agreed to a lesser amount. The Tenant states that they believe that the Landlord then retaliated against the Tenant by giving the Notice and that the Tenant believes that the Landlord is ending the tenancy in order to seek greater rent. The Tenant provides ads for similar units in the area with rental rates.

The Landlord states that they selected two reasons in error and only one reason is valid as their daughter will occupy the unit. The Landlord states that they are not a family corporation. The Landlord does not dispute that they asked for more rent than allowed under the Act and state that they had not raised the rent for 5 years. The Landlord states that the Landlord is also unhappy with the Tenant's acts during the tenancy. The Landlord states that their daughter currently lives with them and has been asking for the past 6 months about finding her own residence. The Landlord states that the unit is close to the educational institution that their daughter is attending and will not be paying the Landlord any rent.

### Analysis

Section 49(3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(4) of the Act provides that a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person,

intends in good faith to occupy the rental unit. Given that the Notice contains two different purposes for the occupation of the unit and the Landlord's evidence that they are not a family corporation I find that the Notice is not valid. Further, given the undisputed evidence that prior to the Notice the Landlord was seeking more rent than allowed under the Act and that the Landlord was unhappy with the Tenant I find on a balance of probabilities that the Tenant has substantiated that the Landlord does not have a good faith intention to occupy the unit. I therefore cancel the Notice and the tenancy continues.

As the Tenant has been successful with the claim, I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

#### Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 11, 2022

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Residential Tenancy Branch