



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RPP, O, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord return her personal property and an order correcting the effective date of a notice to end tenancy issued by the landlord.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to return her personal property; to order correcting the effective date of a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 53, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began on May 1, 2011 as a 1 year fixed term tenancy that converted to month to month tenancy on May 1, 2012 for a monthly rent of \$1,250.00 due on the 1<sup>st</sup> of each month with a security deposit of \$625.00 paid.

The tenant provided a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on September 1, 2012 with an effective date of October 31, 2012 citing the landlord or a close family member of the landlord will be occupying the rental unit.

The landlord testified that he issued and served the notice on September 1, 2012.

The tenant submits that the landlord has failed to respond to her request to retrieve some boxes she has in storage in the landlord's garage. The landlord testified the tenant can pick up her boxes any time. The parties agreed, during the hearing, the tenant would pick up her belonging October 26, 2012 at 7:00 p.m.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if:

- i. The rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;

Section 53 of the *Act* states if a landlord or tenant gives notice to end a tenancy with an effective date that does not comply with the requirements set out in the relevant section the party is seeking to end the tenancy under the effective date is deemed to be changed to the earliest date permitted under the applicable Section.

As such, based on the testimony of the landlord that the notice was issued on September 1, 2012 and that the day in the month that rent is payable is the 1<sup>st</sup> of the month, I find the earliest the tenancy can end would be November 30, 2012 at which time the tenant must vacate the rental unit.

#### Conclusion

As the tenant was successful in her Application I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$50.00** comprised the fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: October 25, 2012.

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Residential Tenancy Branch