



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

CNL, MNDC, OLC

### Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated October 1, 2009, and effective December 1, 2009, a monetary order for money owed or compensation for damage or loss to the tenant for loss of quiet enjoyment and devalued tenancy and an Order to force the landlord to comply with the Act.

The landlord, tenant and tenant's advocate appeared and each gave testimony in turn.

### Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Is the Two-Month Notice to End Tenancy for Landlord's Use supported under the circumstances? As the issue of bad faith has been alleged by the tenant the following questions must be answered:
  1. Whether there an ulterior motive on the part of the landlord for issuing the notice to end the tenancy or
  2. Has the landlord has met the burden of proof to establish that the landlord intends in good faith to occupy the unit?
- Whether or not the tenant is entitled to be reimbursed for loss of quiet enjoyment and the devaluation of the tenancy.
- Whether the landlord should be ordered to comply with the Act

The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use was issued in good faith. The tenant bears the burden of proof in regards to the remainder of the claims and issues.

### **Background and Evidence**

The tenant submitted into evidence a copy of a copy of a Two-Month Notice to End Tenancy for Landlord Use dated October 1, 2009 and purporting to be effective December 1, 2009. The landlord had indicated on the form that the reason for the Two Month Notice was because, "*The rental unit will be occupied by the landlord...*". The tenant raised the issue of bad faith on the part of the landlord and gave testimony that the Notice was issued immediately after the tenant made a complaint about being continually disturbed by the landlord's realty agents showing the rental unit to prospective buyers. The tenant also testified that the latest attempt at evicting the tenant was in reprisal for the tenant refusing to accept an illegal rent increase that the landlord had tried to impose. The tenant submitted into evidence a copy of a handwritten note by the landlord threatening to terminate the tenancy on 30 days unless the tenant agreed to an illegal rent increase from \$900.00 to \$1,100.00. The tenant testified that, at the time the most recent Two-Month Notice was issued, which was on October 1, 2009, the landlord's realtors were still showing the unit to prospective buyers and continued to do so even after that date, despite the landlord's claim that he wanted to move into the unit,. The tenant testified that the landlord's bad faith motives were also illustrated by his actions in previously trying to evict the tenant by issuing a Two Month Notice dated April 28, 2009 in which the landlord had falsely indicated on the earlier Notice form that "*All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give this notice...*" The tenant testified that this misleading notice was ordered to be cancelled during a prior dispute resolution hearing. The tenant pointed out that the landlord's true motives were financial as evidenced by statements he has made. The tenant's position was that the Notice should be cancelled because the landlord did not issue it in good faith.

The landlord testified that he genuinely intended to move into the unit. The landlord felt that the manufactured home belonged to him and he therefore had every right to live in it. The landlord testified that he needed to move away from his current home in Saskatchewan because of the weather. The landlord stated that he wanted to quit the landlord business

because of all the ongoing problems and expenses he has had with this tenancy. No other evidence was submitted in support of the landlord's claim that he had no bad faith or ulterior motive or to confirm that he was preparing to move in. The landlord stated that his current home in Saskatchewan is for sale, but did not provide evidence to confirm this.

The landlord acknowledged that he had written the letter to the tenant threatening to end the tenancy unless the tenant paid a substantial rent increase in violation of the Act. The landlord stated that he did not know what was or was not allowed under the Act. The landlord also argued that there was no tenancy relationship and that this was merely an agreement to help out the tenants and let them live there, provided they pay the landlord's costs.

The tenant's application was also claiming monetary compensation for loss of quiet enjoyment. The tenant testified that the landlord's agents had repeatedly interfered with them by coming to the unit with potential buyers without proper notice and ignoring the tenant's requests not to be bothered. The tenant testified that one day while the tenant was recovering from surgery, the tenant awoke to find 3 women in the rental unit who had been brought in without the tenant's permission by the realtor. The tenant testified that the landlord's conduct in trying to evict the tenant through means that violated the Act and appearing at the unit to verbally abuse the tenants on more than one occasion, would warrant a reduction of rent by \$300.00 per month for the past 8 months and is seeking a monetary order for \$2,400.00. The tenant was also requesting an order that the landlord must comply with the Act by giving proper notice and not harassing the tenants.

The landlord disputed this claim and denied bothering the tenants. In regards to the actions of the realtor, the landlord stated that he had no control over what they did and should not be held responsible. The landlord acknowledged that no written notice was given prior to his visits, but would be willing to give notice in future. The landlord stated that this particular issue has been resolved as the unit has been taken off the market.

## **Analysis**

After a mediated discussion the parties came to a mutually agreeable resolution the terms of which are as follows:

- The tenant agrees to vacate the unit on or before March 31, 2010 and the landlord will be issued an enforceable Order of Possession effective that date.
- The landlord agrees to comply with the Act by giving proper written notice prior to showing up at the rental unit and agrees not to engage in any conduct that interferes with or bothers the tenant.
- The tenant will still be entitled under section 51 of the Act which requires the landlord to pay the tenant, on or before the effective ending date of tenancy, an amount equivalent to one month's rent payable under the tenancy agreement.
- If the tenant manages to find a suitable place to relocate prior to the March 31, 2010 deadline, the tenant is at liberty to end the tenancy earlier by
  - (a) giving the landlord at least 10 days' written notice to end the tenancy and
  - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due pro-rated to the effective date of the tenant's notice. This is a right under section 50 of the Act.
- However, if the tenant has already paid the rent before giving the 10 day notice to vacate, on receiving the tenant's notice the landlord must refund any rent paid for a period that falls after the effective moving date on the tenant's notice. Moving earlier will not affect the tenant's right to an additional one month compensation under section 51 *above*.

The above terms were agreed to by both parties and are enforceable.

## **Conclusion**

Based on the agreement reached by the parties during these proceedings, I order the landlord to comply with the Act by giving 24 hours written notice to access the rental unit and not to engage in any conduct that unreasonably interferes with the tenant.

Based on the agreement reached by the parties during these proceedings I order that the tenant will still be entitled under section 51 of the Act to receive from the landlord, an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Based on the agreement reached by the parties during these proceedings I hereby order that regardless of the above, the tenant may also end the tenancy earlier by giving the landlord at least 10 days' written notice to end the tenancy and will only owe a proportion of rent for the number of days of the month that fall prior to the tenant vacating, which is a right under section 50 of the Act. This does not affect the tenant's entitlement to receive e tenant is still entitled to an additional amount that that is the equivalent of one month's rent payable under the tenancy agreement. The above orders must be served by the tenant on the landlord and may be enforced.

Based on the agreement reached by the parties during these proceedings, I grant the landlord an Order of Possession effective Wednesday, March 31, 2010 at 1:00 p.m. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

The remainder of the tenant's application is dismissed without leave.

December 2009

Date of Decision

---

Dispute Resolution Officer