



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** DRI, CNL

### **Introduction:**

This hearing was convened upon the application of the tenant seeking to:

1. To dispute an additional rent increase;
2. To cancel a Notice to End Tenancy given for Landlord's Use; and
3. To recover the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

### **Summary of Background**

The landlord served a 2 month Notice to End Tenancy for landlord's use. The tenants acknowledge receipt of the Notice on November 23, 2009. The effective date of the Notice is January 31, 2009. At the hearing the landlord testified that she wishes to occupy the rental unit herself.

The landlord denies the tenants' allegation that the Notice to End Tenancy was given as retaliation for the tenants' refusal to assist her in renting another building on the property.

In her submissions the landlord states that she initially had the property listed for sale for the sum of 1.4 million when she approached by the tenants who expressed an interest in purchasing the rental unit which also operates as a ranch. The landlord says the tenants visited the ranch numerous times to view the property and discuss plans to purchase the property and take over ownership.

Eventually the tenants advised the landlord they were unable to secure the financing necessary to make the purchase. The tenants advised that they were interested in buying into the ranch by way of purchasing shares in a limited company which could be incorporated to own the ranch. The landlord began to pursue this idea with her lawyer and accountant.

In the meantime, with a view to selling the property to the tenants and wishing to ensure a seamless transfer of ownership, the landlord moved into an adjacent shop on the property and the tenants moved into rental unit. The landlord agreed to accept a reduced rent of \$650.00 per month with the understanding that the tenants would also

look after the property and manage ranch operations while the landlord took an extended vacation. The landlord says she trusted the tenants because the male tenant was a retired RCMP Officer. Feeling confident that the tenants would be reliable managers while she was gone, the landlord left for an extended vacation on January 23, 2009.

When the landlord returned from her vacation on March 31, 2009 she found there had been significant damage to the rental property as a result of severe winter weather and lack of maintenance. The landlord also discovered that the tenants had held themselves out to the community as the new owners of the property even though no sale had yet taken place.

The landlord says medical problems that began while she was on vacation prevented her from taking any further steps with respect to the tenancy. The landlord says while she attended to her medical problems the tenants remained in occupancy of the rental property and it continued to decline. The landlord says the ranch operations were also suffering a loss because the tenants were selling the wood and hay but failing to collect the money for the sales from the buyers. In addition, the landlord says the tenants moved animals onto the property including 3 large dogs that resided in the rental unit.

When the landlord's health improved she returned to the property on September 21, 2009 and noted its poor condition. The landlord says the female tenant advised that her husband did not want to look after the ranch anymore as it was too much work. The landlord then advised that since the tenants were not going to be performing any of the work required as agreed the rent must go up to the full market rate. The tenants refused to accept an increase. In the end the landlord says the tenants agreed to move out by January 31, 2010 in exchange for being allowed to remain on the property at the \$650.00 per month rental rate until they vacated.

In her submissions the landlord says she is a widow who trusted the tenants. She says she now believes that the tenants moved into the rental property intending to run it into the ground and cause the landlord financial difficulties which would force her to sell the property to them at a bargain price. In the end the landlord says she reconsidered the idea of renting the property. She now wishes to have her home back so she can live in it and hire part-time help to assist her in running the ranch. To ensure no further problems with the tenancy, on November 20, 2009, the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use with an effective date of January 31, 2010. Since that time the landlord says the tenants have become difficult. The landlord says the tenant's have threatened her and she is afraid of them. The landlord says that in December they told the landlord "...the fight is on..."

The tenants state that the landlord asked them to help rent another unit on the property but the tenant refused to assist because the unit was mouldy inside. The tenants say after this refusal the landlord sent them a letter raising their rent from \$650.00 per month to \$1,500.00. The tenants say they did not pay the rent increase and this is the

real reason for the eviction. The tenants wish to dispute this rent increase and are seeking to cancel the Notice to End Tenancy given for landlord's use.

### **Findings**

The Act allows a landlord to end a tenancy when:

the landlord or a close family member of the landlord intends in good faith to occupy the rental unit;

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have a tenant vacate the residential premises.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that she truly intends to do what she has indicated on the Notice to End, and that she is not acting dishonestly or with an ulterior motive as her primary motive

### **Findings**

The landlord testified that the tenancy involved an agreement with the tenants that they would have a reduced rent in exchange for maintaining the rental property and running ranch operations. The landlord says that he tenants were not maintaining the property, nor were they collecting monies owed to it and this is causing financial hardship to the landlord and damage to the rental unit. Following this experience the landlord decided to return to live in her home and run the ranch herself with the intent of hiring part-time help. Overall I find the landlord's reasoning to end this tenancy to be reasonable and I accept her evidence that she intends, in good faith, to occupy the rental unit. I will therefore dismiss the tenants' application to set aside the Notice to End Tenancy.

With respect to the matter of the disputed rent increase, that increase has not been formally requested nor paid. The application is therefore unnecessary and is dismissed.

At the hearing of this matter the landlord requested an Order of Possession as of the effective date on the Notice that is January 31, 2010. Having upheld the Notice, the landlord is entitled to that Order. At the hearing of this matter the tenants requested an extension of effective date of the Notice. The landlord testified that due to her concerns with respect to the damage being done to her property she is not be prepared to agree to an extension of the effective date on the notice. The landlord says she is particularly concerned about the tenant's three large dogs that currently reside in the home.

The tenants say they cannot move-out by January 31, 2009. The tenants say that it would be traumatic to move themselves and their animals by this date. The landlord

says that she has parties who are able to assist with moving the tenants' animals and she is adamant that the tenancy end on the effective date of the notice.

Section 55(3) of the Act does allow me to grant an order of possession before or after the date when a tenant is required to vacate a rental unit. Section 68(2) allows me to order that a tenancy end on a date other than the effective date shown on the notice to end the tenancy. In this regard, I accept the landlord's testimony with respect to her concern for the wellbeing of her property and, being mindful of this and finding there is a lack of goodwill between the parties, I will not extend the effective date on the Notice. Therefore, the Order of Possession will be issued as set out on the Notice to End Tenancy.

### **Conclusion**

The landlord is provided with a formal copy of an Order of Possession. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.