



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes CNC, CNL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel the One Month Notice to End Tenancy for Cause and to cancel the Two Month Notice to End Tenancy for the landlords' use of the property.

The tenant served the landlord by registered mail on December 24, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The landlords' representative appeared on the behalf of the landlord. The tenants both appeared. Both parties gave testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. At the end of the hearing I allowed the tenant to fax me copies of e-mail correspondence between the tenants and the landlord. The landlords' representative had received copies of these documents but I had not received these before the hearing. On the basis of the evidence presented at the hearing and the evidence presented after the hearing I have determined:

### Issues(s) to be Decided

- Should the One Month Notice to End Tenancy for cause be cancelled?
- Should the Two Month Notice to End Tenancy for the landlords use of the property be cancelled?

## Background and Evidence

This month to month tenancy started on June 12, 2006. The tenants pay a monthly rent of \$3,000.00. There is some dispute over which day the rent is due. The tenants state that they have never been notified by the landlord which day they should pay the rent. The landlords' representative states that it is his believe that the rent is due on the 1<sup>st</sup> of each month.

The landlord served the tenant with a One Month Notice to End Tenancy on December 14, 2009 by fax. This gave a date to vacate the rental property of January 14, 2009. As this was received by fax and did not give the tenant one clear months Notice pursuant to section 47(2) of the Act this date has been amended to January 31, 2010. On the same day the landlord also served the tenant with a Two Month Notice to End Tenancy for the landlords' use of the property. This was again served by fax and the date given to vacate the property has been amended to February 28, 2010.

The landlord gave the following reasons on the One Month Notice:

- 1) the tenant is repeatedly late paying rent;
- 2) the tenant has assigned sublet the rental unit without the landlord's written consent

The landlord gave the following reason one the Two Month Notice:

- 1)The unit will be occupied by the landlord or the landlords spouse or a close family member(father, mother or child) of the landlord or the landlords spouse.

The landlords' representative states that the tenant has been repeatedly late paying rent and has provided a rent history from December 31, 2007 to October 06, 2009 showing the dates rent has been paid. This statement shows that rent is paid on dates throughout the month but generally within the first week of each month.

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The tenants state that they did not have a written tenancy agreement with the landlord. They took over the tenancy from a previous tenant and had no contact with the landlord until recently. The tenants claim they have attempted to contact the landlord by e-mail and telephone over the first 10 months of the tenancy to confirm which dates he would like their rent payments to be made. As they did not hear from the landlord they continued to pay rent around the first week of each month although they did not move into the property until the 12<sup>th</sup> of the month. On March 03, 2009 they received their first e-mail from the landlord and again on August 13, 2007 to agree to sign a lease agreement. This never materialized but the tenants state they had a discussion with the landlord about a long term lease with an option to purchase the property. Over the four years of their tenancy the landlord never stated that rent should be paid on a specific day and had never received any notification from the landlord that the dates they had paid their rent was unacceptable. The tenants also notified the landlord of the maintenance issues by e-mail and organised the repairs to the property.

The landlords' representative claims the tenants have sublet the property without written permission from the landlord. The landlords' representative states that the landlord had no knowledge that the separate suite was sublet until recently and did not give his consent to the tenants for them to sublet this suite or use the rental income for this against the rent for the whole property.

The tenants state that when they moved into the property there was a tenant living in the separate suite which had always been sublet. They were informed by the previous tenants that it was their responsibility to collect the rent and look after this tenancy as part of their tenancy. They were also told to collect the rent and include that as part of their \$3,000.00 rent. The tenants claim that they continued on the same terms as the suite has been sublet over the last 10 to 12 years and the landlord has never directed them to do anything differently. The tenants claim that the landlord has spoken to this tenant in the separate suite and made a separate arrangement with them to continue their tenancy.

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The landlords' representative states that the landlord intends to return to Canada in January and wishes to reside in his property. He informed the tenants of this by e-mail and issued them with a Two Month Notice to End Tenancy based on this decision.

The tenants have provided copies of the landlords' e-mails and argue that the e-mails indicate that the landlord appears to want to use the property for six weeks during the Olympics as he would have to pay a substantial amount of rent elsewhere. The tenants also argue that in one of the landlords' e-mails he indicates that he will put in a caretaker to attend to the property in the landlords' absence.

The tenants argue that nothing in the landlords' e-mails indicates that he is returning to Canada to take up residence full time and the tenants have concerns that the landlord wishes to use the property for either his business colleagues or himself during the Olympics only.

The landlords' representative argues that at the time the landlord indicated he would put a caretaker into the property this was for the separate suite before he was aware that a different tenant was living there. He argues that it is the intention of the landlord and his family to return to Canada and take possession of their property.

## Analysis

I have carefully considered all the evidence before me. With regard to the One Month Notice to End Tenancy for Cause I find that the tenants did not have any contact with the landlord at the start of their tenancy. Despite numerous attempts to contact him asking for either a tenancy agreement or verbal agreement concerning details of the tenancy and dates that rent should be paid, The landlord did not respond until many months into the tenancy and did not confirm which day he required rent or provide the tenants with a lease agreement indicating which date rent was required. The tenants continued to pay rent around the first week of each month. In the years that their tenancy continued the landlord would have had many opportunities to contact the tenants and specify the terms of a tenancy agreement. This indicates to me that the landlord

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had no concerns about when the tenants paid their rent during the entire length of the tenancy until recently.

With regards to the second reason given on the landlords Notice to End Tenancy, that the tenants had sublet the separate suite without the landlords consent. I find that the tenants moved into the property when the suite was already sublet and they continued with this arrangement as they were told the suite had always been used in this manner. The tenants were able to assume this was an agreement with the landlord and the landlord took no action during the tenancy and did not appoint an agent to act on his behalf to manage the property. Therefore, I find the tenants did everything they could to contact the landlord with very little success and I find they have acted in good faith throughout the tenancy with regard to the sublet. Consequently the One Month Notice to End Tenancy for Cause is cancelled.

With regards to the landlords Two Month Notice to End Tenancy for the landlords' use of the property. In this instance the burden of proof lies with the landlord to prove that he or his spouse or a close family member does intend to occupy the property. I find that the e-mails the landlord has sent the tenant do not indicate that the landlord intends to return to Canada and reside at the property full time. These e-mails do indicate that the landlord has a snow and surf media business overseas and he is sending a team over for the Olympics. He also states in this e-mail that the cost of accommodation for the six weeks will be well over what rent he can get for the house all year and that this is the basis for his decision to end the tenancy. Another of the landlords' e-mails refers to using the house for the Olympics and he is happy to have it empty for the year and may put someone into the property at subsidized rate to act as a sort of caretaker.

I find the landlord has failed to satisfy the burden of proof regarding his occupation of the rental property. The landlord has not provided sufficient evidence that he does intend to return to Canada to take up residence of the rental property and it is very likely that the landlord intends to either use it for his business team or for himself during the Olympics only. Consequently the Two Month Notice to End Tenancy is cancelled.



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## Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated December 14, 2009 is cancelled. The Two Month Notice to End Tenancy for the landlords use of the property dated December 14, 2009 is cancelled and the tenancy will continue.

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: January 28, 2010.

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Dispute Resolution Officer