



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNL, OLC, FF

### Introduction

This hearing was scheduled to deal with the tenants' application of December 4, 2009 to cancel a *2 Month Notice to End Tenancy for Landlords' Use of Property* issued November 29, 2009. Another tenant not named on the Application for Dispute Resolution appeared at the hearing. An advocate (herein referred to as "the advocate") also appeared at the hearing on behalf of the two co-tenants who filed this application. The landlords named in this application include the corporate landlord and a director of the corporation (herein collectively referred to as "the landlord"). The landlord appeared at the hearing. All parties in attendance were provided the opportunity to be heard and to respond to the submissions of the other party.

As a preliminary issue, the advocate raised an issue with the landlord's evidence being served less than five days before the hearing date. I determined that the landlord's evidence was prepared one day after being served with the tenants' evidence and submissions. As the landlord's evidence was received by the advocate and by the Residential Tenancy Branch within two days of this hearing, I accepted the landlord's documentary evidence.

I enquired as to the status of the individual in attendance at the hearing who identified herself as a tenant. The landlord expressed no objection to recognizing the female tenant present at the hearing as a tenant. I also heard and recognize that there are up to six people occupying the rental unit.

As another preliminary issue, I enquired about the advocate's attempt to introduce a subsequent Notice to End Tenancy issued December 10, 2009 to this proceeding without making an amended application or a new application. It was the tenant's submission that the tenant brought the December 10, 2009 Notice to End Tenancy to the Residential Tenancy Office and was informed that an amended application was not required and that the December 10, 2009 Notice could be dealt with at this hearing. The landlord pointed out that he was not aware that the tenants had disputed or intended to dispute the December 10, 2009 Notice until he received the advocate's evidence package on January 7, 2010. The landlord had provided documentary evidence in support of the issuance of the December 10, 2009 Notice that was accepted as evidence for this hearing. Accordingly, the landlord was asked if he wanted to proceed with addressing the tenants' concerns related to the issuance of the December 10, 2009 Notice to which he agreed he was. I proceeded to hear from the parties with respect to the December 10, 2009 Notice to End Tenancy.

The advocate had also requested two other issues be addressed at this hearing, which were not identified in the application, but were included in the advocate's evidence package. The landlord responded to the two additional issues and this decision includes Orders related to those additional issues.

#### Issues(s) to be Decided

1. Is there a basis to set aside the November 29, 2009 Notice to End Tenancy?
2. Is there a basis to set aside the December 10, 2009 Notice to End Tenancy?
3. Mutual agreement between the parties.
4. Order to the landlord and tenants to comply with the Act and mutual agreement.
5. Order to the landlord to provide a key to the basement to the tenants.
6. Award of the filing fee.

### Background and Evidence

The parties provided undisputed testimony that the landlord issued a *2 Month Notice to End Tenancy for Landlord's Use of Property* on November 29, 2009 and that the Notice did not include a reason for ending the tenancy on page two of the Notice. The landlord served another *2 Month Notice to End Tenancy for Landlord's Use of Property* on December 10, 2009 and personally served it upon one of the co-tenants on that date. The December 10, 2009 Notice has an effective date of February 28, 2010 and indicates that the reason for ending the tenancy is 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 the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit".

The landlord provided evidence from the lawyers handling the property sale to confirm the conditions related to the sale of this property have been satisfied. The landlord did not provide a copy of the letter received from the purchaser of the property as evidence but the landlord was asked to read from the purchaser's letter. The letter indicated the purchaser wanted vacant possession of the rental unit but did not indicate the reason the purchaser wanted the rental unit vacant.

After some discussion with parties about the rights and obligations of the parties under the Act, I was able to facilitate a mutual resolution to this dispute which I record as follows:

1. The tenancy shall continue until March 31, 2010 at which time the tenancy will end and the tenants, and any occupants, will be required to vacate the rental unit.
2. The tenants are required to pay rent for the month of February 2009 but the tenants are not required to pay rent for the month of March 2009.

3. The landlord agrees to comply with section 29 of the Act which provides for the landlord's restricted right to enter the rental unit.
4. The landlord will provide a key to the basement for the tenants to use during the remainder of the tenancy.

The advocate acknowledged that the tenants will be made aware of their obligation to ensure all possessions are removed from the rental unit by March 31, 2009.

### Analysis

I accept the mutual agreement reached between the parties and find that this tenancy shall end March 31, 2010 by mutual agreement. In recognition of the mutual agreement, I make the following Orders upon the parties:

1. The tenants must pay rent for the month of February 2010.
2. Provided the tenants pay rent for the month of February 2010, the tenants are entitled to occupy the rental unit until March 31, 2010 and are not required to pay rent for March 2010.
3. The tenants must vacate the rental unit by March 31, 2010 and must remove all of their possessions from the rental unit, the basement and any other common area of the residential property by March 31, 2010. The landlord is provided an Order of Possession to ensure the landlord regains vacant possession of the rental unit.
4. The landlord is ordered to comply with section 29 of the Act.
5. The landlord is ordered to provide a key to the basement to the tenants forthwith and not prohibit the tenants from using the basement for lawful purposes.

As information for the parties, section 29 of the Act is reproduced below:

**Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I award the cost of the filing fee to the tenants. The tenants are permitted to deduct \$50.00 from rent payable for February 2010. Where rent has been reduced \$50.00 in recognition of this award, the landlord must consider the rent paid in full. If the landlord receives the full amount of rent for the month February 2010, the landlord must refund to the applicants \$50.00 upon receiving rent for February 2010.

Conclusion

The tenancy shall end and the tenants must vacate the rental unit by March 31, 2010 in accordance with the terms of the mutual agreement reached between the parties. The landlord has been provided an Order of Possession effective March 31, 2010 to serve upon the tenants. The tenants must pay rent for the month of February 2010. The landlord is further ordered to comply with section 29 of the Act and must provide a key to the basement to the tenants forthwith.

The filing fee has been awarded to the tenants and the tenants may recover this award by deducting \$50.00 from the rent payable for February 2010.

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 14, 2010.

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Dispute Resolution Officer