



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      CNL, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Two Month Notice to End Tenancy ("the Notice") issued by the landlord and for an order requiring the Landlord to comply with the Act, regulations or tenancy agreement by way of suspending or setting conditions on the Landlord's right to access the rental unit

Both the landlord and tenant appeared, the landlord acknowledged receipt of Tenant's evidence and Application for Dispute Resolution, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

Is the Tenant is entitled to an Order to cancel the Notice to End Tenancy?

Is the Tenant entitled to an order that the Landlord comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

The rental unit is one of 5 cabins located on acreage. The tenant has occupied the rental property since approximately February 2002 or 2003, with no written tenancy agreement. The current landlord purchased the land which houses the rental property approximately three years ago, at which time the parties entered into a written tenancy agreement. The tenancy agreement was not submitted into evidence and I note that neither party was clear on the dates contained therein. Rent is \$337.00 per month and is payable on the first of each month. A security deposit in the amount of \$175.22 was paid in 2002 or 2003.

I allowed a late submission of evidence by the Landlord; thus I find that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property by

posting on the door. The Notice explains that the Tenant had fifteen days to dispute the Notice. It also explains that if the Tenant does not file an Application to Dispute the Notice within the fifteen days, then the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

I note the Landlord submitted 2 Notices, one dated July 30, 2010, which apparently was never served on the Tenant and the second one, with the date not visible. It is not clear from the evidence submitted by the Landlord that the second page of the Notice was delivered, a requirement of section 52 of the Act. The effective date indicated on the second Notice is October 31, 2010 and based on testimony of both parties concerning delivery date of August 21, 2010, I find the Tenant did file an Application to dispute the Notice in time.

The Tenant testified he came home on August 17, 2010 to find a contractor working for the Landlord using the Tenant's lawn furniture to prop up wood and electricity to saw the wood. He pulled the plug and told the contractor not to use his property or his power and to remove himself from his property.

Shortly after this incident, The Tenant testified the Agent for the Landlord entered into the rental unit, without knocking and without notice, threw some money down and cursed at the Tenant. The Tenant testified that the Agent for the Landlord often came into his rental unit without knocking and without permission, and regularly cursed at him anywhere on the premises.

The Tenant testified that the Agent for the Landlord often attempted to pick a fight with him and that he, the Tenant, tried to avoid seeing the Agent. The Tenant testified that the Agent has called the Landlord and stated he wanted to get rid of the Tenant.

The Tenant stated that no one has told him what the construction or renovation in the rental unit is for and was told by the Landlord that he had to get along with the Agent or he, the Tenant, would lose his cheap, affordable housing.

The Tenant testified that on August 21, he went into town and when he came back, a Two Month Notice to End Tenancy, dated August 11, was posted on his door by the Agent for the Landlord. The Notice stated that the Landlord has all necessary permits and approvals required by law to demolish the rental unit in a manner that requires the rental unit to be vacant.

I note that the Notice was not submitted into evidence by either party, but I allowed the Landlord to fax the Notice within a two hour period after the hearing.

The Tenant testified that he should not have to move and that there is nothing wrong with the rental unit which would necessitate immediate or urgent intervention. The evidence of the Tenant indicated that neither the Landlord or his Agent have inspected the rental unit in 3 years and supplied into evidence photos of the rental unit which

proves his assertion that there are no repairs which would warrant him having to moving out.

The Landlord testified that there were two notices issued due to transmission problems with the first one. The Landlord testified that he issued the notice as he wanted to sell the property and maximize its potential. He indicated the rental unit could rent for \$500.00 per month.

The Landlord testified that there could be opportunities to replace the cabinet tops, that the bathroom could be gone over and wasn't sure if there was water damage. He further testified that the whole cabin needs to be gone over, touched up and made presentable. I note the Landlord did not submit into evidence permits and/or approvals required by law, nor did he testify that he obtained the same. Rather, the Landlord testified that he wanted to make the place more presentable to increase the rent. I was not able to determine what renovations were planned for the rental unit.

The Landlord testified that the other cabins had renovations between occupancies, but it was not clear from the testimony to what extent.

As to the issue of the Tenant's quiet enjoyment, the Landlord testified that he did not believe the Tenant's table was damaged during the unauthorized use by the contractor and that he did not know if the Agent went onto the Tenant's property. The Landlord testified he was unaware of any cursing by the Agent.

#### Analysis: Notice to End Tenancy

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Once the Tenant made an Application to dispute the Notice alleging it has been given in bad faith, the Landlord became responsible to prove the Notice to End Tenancy is valid.

The Notice was issued pursuant to section 49(6)(e) of the *Act*, which requires the Landlord to have all necessary permits and approvals, and a good faith intention, to use the unit for the stated purpose, i.e., renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Guidance for the interpretation of this section of the *Act* comes from other decisions, case law and the policy guideline.

The relevant Policy Guideline is section 2, and states, in part:

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 the tenant vacate the residential premises.

For example, the landlord may intend to renovate or repair the rental unit as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent...

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive.

The Tenant here has disputed the good faith of the Landlord in issuing the Notice.

I find the Landlord did not submit evidence of the permits or approvals, or even stated what the intended repairs are to be. From the sparse submissions on this issue I do not find that any of the possible repairs or renovations require the rental unit to be vacant.

I accept the testimony of the Tenant that neither the Landlord nor his Agent has inspected the property in the last three years and are therefore in no position to know if any repairs need to be done. I find the Landlord's testimony that he could receive a much greater rent for the rental unit suggests he has an ulterior motive for issuing the Notice.

Therefore, I find the Landlord submitted insufficient evidence to prove any permits or approvals or specific plan for repairs or renovations, and since the Landlord's motives appear to be in contravention of the section 43 of the Act regarding rent increases, I find that the Landlord is attempting to end this tenancy in bad faith.

**Based on these findings, I find that the two month Notice to End Tenancy issued in this matter is not valid and I order it to be cancelled. The Notice is of no force or effect and the tenancy will continue until ended in accordance with the Act.**

#### Analysis: Notice to End Tenancy

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment, meaning reasonable privacy, freedom from unreasonable disturbance and *exclusive possession* of the rental unit. I accept the uncontradicted testimony of the Tenant that the Agent for the Landlord has repeatedly entered the rental unit without invitation and unannounced and I find the Tenant experienced a loss of quiet enjoyment, due to the Landlord not providing the Tenant with a written notice to access the rental unit in accordance with section 29 of the Act. I do not make a finding of monetary compensation for this loss as the Tenant has not applied for the same.

The Landlord is ordered to adhere to the terms of the Act and the tenancy agreement, when seeking access to the unit and for other dealings with the tenancy. I have included a guidebook to the Act for the Landlord to use as a reference.

Lastly, I also allow the Tenant the **\$50.00** filing fee for the Application, and allow him to deduct this amount from the next monthly rental payment.

### Conclusion

The Landlord submitted insufficient evidence to prove why the rental unit should be vacated and I allow the Tenant's Application for Dispute Resolution, and **I order that the Two Month Notice to End Tenancy, is cancelled and is of no force or effect.**

I order the Landlord comply with the Act and direct that the Tenant be given quiet enjoyment of the rental unit and premises.

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: September 30, 2010.

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Dispute Resolution Officer