



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNL, OLC, FF

### Introduction

This was an application by the tenant to cancel a Notice to End Tenancy for landlord's use. The hearing was conducted by conference call. The tenant and the landlords participated in the hearing.

### Issues(s) to be Decided

Should the Notice to End Tenancy be cancelled?

### Background and Evidence

The rental property is a house in Surrey. The rental unit is one of two rented basement suites in the house. The landlords live in the upstairs portion of the house. The tenancy began in August, 2008.

The landlord served the tenant with a two month Notice to End Tenancy for landlord's use. Neither the tenant nor the landlord submitted a copy of the Notice as evidence. I was told that the Notice was dated September 14, 2010. It was the second Notice for landlord's use given to the tenant. The first notice was the subject of a dispute resolution proceeding and it was cancelled by the Dispute Resolution Officer in a decision dated September 9, 2010.

The landlord said that the second Notice was given because the mother of one of the named landlords intended to move into the rental unit. The landlords submitted a

statutory declaration wherein the mother said in part: "That it is necessary for me to be living in the suite to so that I can care for my grandchildren while their parents are at work." The mother did not attend the hearing and was not available for cross-examination. According to the landlords the mother does not live with them.

At the hearing the landlords said that they wish to have the mother stay in the rental unit with their two children when they are away travelling.

The tenant testified that the mother lives in the upstairs unit and has done so since her tenancy began. She disputed that the Notice was given in good faith. She testified that the landlords have told her to move on several occasions and have told her that: "This is our house and we can do what we want", or words of similar effect. The tenant referred to the previous dispute resolution decision and suggested that the landlord's sought to evict her in order to circumvent portions of the ruling that required the landlords to retain a mould abatement specialist to assess and remove mould from the rental unit. She also suggested that the landlord wanted to reconfigure the rental unit and rent it out in a different form. She noted that the other two bedroom basement suite was recently vacant and if the landlords wished to have the mother move into a suite that would make more sense than to have her occupy the tenant's three bedroom suite.

The landlord's said that the three bedroom suite was required so the mother and two children could stay in the suite when the landlord's were away travelling.

### Analysis and Conclusion

I did not find the landlord's explanation of the reasons for the Notice to End Tenancy to be credible. I note that the mother did not attend the hearing to give direct evidence and make herself available to answer questions. The landlord's explanation for the need to have the mother occupy the rental unit was different from the reason stated by the mother in her declaration. Although the landlord's denied that the mother lives with them, I prefer the tenant's evidence that she has lived in the house full-time throughout

her tenancy. I find that the landlord's explanation that the rental unit is necessary for the mother to occupy with the children when the landlords are away makes little sense and causes me to question whether the Notice was given in good faith. I am not satisfied on a balance of probabilities that a close family member of the landlords intends in good faith to occupy the rental unit. I therefore order that the Notice to End Tenancy for landlord's use be, and is hereby cancelled. The tenancy will continue.

The tenant is entitled to recover the \$50.00 filing fee for her application and she may deduct the said sum from a future instalment of rent.

Dated: November 02, 2010.

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