



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes CNL

### Introduction

This hearing dealt with the tenant's application disputing a 2 month Notice to End Tenancy for Landlord's Use of the Rental Property. The tenant also sought compensation for damage or loss suffered as a result of a breach of the tenancy agreement and for orders that the landlord provide services or facilities required by law and to reduce the rent for repairs, services or facilities agreed upon but not provided.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to cross examine the other party, and make submissions to me.

The tenant withdrew his monetary claim at the start of the proceeding and pursuant to rule 2.3 of the rules of procedure I have dismissed, with leave, the tenants request for orders related to service or facilities. I find that these are not specifically related to the dispute of the notice to end tenancy and if the notice to end tenancy is not set aside these requests will no longer have merit since the tenancy will be ended. If the notice to end tenancy is not set aside and the tenancy continues, then the tenant may file a new application to resolve these other disputes.

### Issue(s) to be Decided

Has the landlord issued the 2 month Notice to End Tenancy for Landlord's Use of the Rental Property in good faith?

Should the notice to end tenancy be set aside?

### Background and Evidence

The tenant has filed an application disputing a 2 month Notice to End Tenancy for Landlord's Use of the Rental Unit. This has been a longstanding tenancy since 2000 or 2001 but in recent months the relationship between the parties has deteriorated. The tenant had formally been granted a lot of discretion in the management of the rental unit

and has apparently completed a lot of work on the rental property for which he claims the landlord has not paid him. All aspects of the employment relationship between the landlord and the tenant are not an issue being considered as part of this application and are relevant only in explanation of the deteriorated relationship between the landlord and the tenant. The tenant's role as a property manager for the residential property has ended.

As a result of the breakdown of the personal and employment relationship the tenant alleges that the landlord has only issued the 2 month Notice to End Tenancy in reprisal and as a means of evicting him from the property. The tenant does not believe the landlord truly requires the use of his rental unit for his own use.

The tenant submits that the true motive of the landlord is reflected by an earlier attempt by the landlord to have him change the terms of his original tenancy agreement in October 2010. The new tenancy agreement the landlord wished the tenant to sign increased the monthly rent by \$200.00 but was also for a fixed term until October 2011. The tenant submitted that this demonstrates that the landlord intended to keep the unit rented and not occupy it as they now claim.

In support of his position, the tenant points to the landlord's attempt to end the tenancy by issuing a 1 month Notice to End Tenancy for Cause. The tenant disputed this notice in a previous application for Dispute Resolution. In a decision rendered on December 13, 2010 the Residential Tenancy Branch determined that the 1 month Notice to End Tenancy was of no force or effect setting it aside.

The landlord submits that it was always his intent to return to the rental property and to use it for his own purpose. The landlord stated that the tenant was aware of this from the beginning of the tenancy. The landlord stated that he and his family have been living in another city for a number of years but are now transitioning back to permanently reside in the rental unit. The landlord's wife has already moved into the main part of the house and eventually the landlord plans to phase out all the units in the property and have it solely for his own use. The landlord submitted that this is his legal right as the owner of the property to choose to occupy the rental units.

The landlord stated that the tenant's rental unit is one of two suites on the lower level. The landlord submitted that from the stairs of the upper level to the lower level, the tenant's unit is the first rental unit and in closest proximity to the main portion of the residential property.

The landlord stated that the second lower unit was not the first to be assumed because it was further away from the upper unit, being farther back from the stairs to the main level and because it is still currently rented. The landlord stated that the original occupants did vacate the second rental unit, but it was a fixed term lease and the tenancy agreement has been assigned to new occupants. The landlord stated that at some point in the future it is his intent to occupy the entire residential property for his own use.

The landlord stated that the tenant's unit is required to expand their living space and, specifically, to use it for business purposes as he transfers his business to this city. The landlord stated that he is in the process of relocating his business from another city but did not provide any dates or other specifics about when this was occurring. The landlord submitted that this is their only accommodation and require the additional space to accommodate family and guests; including their grown children and in combination requiring more space for his business the tenant's rental unit is required.

The tenant called these reasons into question by stating that the upper rental unit is very large with five bedrooms and an office. The tenant questioned why the upper unit did not meet the landlord's requirements.

I note that the landlord and his family occupied the upper unit, with the two lower units rented, when they originally purchased the rental property.

### Analysis

Based on the evidence before me and the balance of probabilities, I find as follows:

The tenant has disputed the notice to end tenancy served by the landlord and has called the landlord's "good faith" into question.

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.

While I acknowledge that the landlord is the owner of the residential property and as an owner does have the right to occupy the rental unit as it becomes available, the landlord cannot end a tenancy for his own use except provided for by section 49 of the *Act*. The landlord's intention or motive for wanting to end the tenancy and use the rental unit has

been called into question by the tenant. Therefore, the landlord has the burden of proving his true motivation for seeking to end the tenancy.

I find that the landlord has not demonstrated that the 2 month Notice to End Tenancy for Landlord's Use was issued in good faith.

The landlord has already unsuccessfully attempted to end the tenancy for cause by issuing a 1 month notice to end tenancy at the end of October 2010. In addition, the personal relationship between the tenant and the landlord has been very acrimonious due to an employment and tenancy disputes. I find the tenant's submission that the landlord issued the 2 month notice to end tenancy only a few weeks after receiving the decision setting aside the 1 month notice to end tenancy to be very compelling evidence as to the underlying motive of the landlord. In the circumstances before me the tenant has shown that the landlord has other motivations for ending this tenancy based on this previous attempt to evict the tenant and the deterioration of the friendship and employment relationship.

Despite evidence of an ulterior motive the landlord contends that he intends to use the tenant's rental unit as expanded living accommodation and for business purposes. However, the landlord did not provide sufficient evidence to confirm that he is relocating a business or that he required any additional living space to accommodate his business or family. At the time of the hearing there wasn't even any evidence that the landlord was even in the process of moving yet, although I do accept that the landlord's wife is living in the rental unit, at least occasionally.

When the landlord originally purchased the rental unit he occupied the upper unit with his family with both the lower units occupied. The landlord did not provide sufficient evidence to demonstrate that the needs of their family have changed so significantly as to require the tenant's unit for additional living accommodation and business operation. I accept the tenant's evidence that the upper unit has five bedrooms and an office, so in the absence of compelling evidence to substantiate that the additional space is required I find it is more likely than not that the landlord has issued the two month Notice to End Tenancy for Landlord's Use of the Rental Unit with an underlying ulterior motive.

Conclusion

Therefore, I grant the tenant's application and set aside the 2 month Notice to End Tenancy for Landlord's Use of the Rental Unit. The notice is of no force or effect and this tenancy will continue until it ends in accordance with the *Act*.

As the tenant's application is successful I order that the tenant may recover the \$50.00 filing fee paid for filing this application from the rent owed on March 1, 2011.

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: February 07, 2011.

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Residential Tenancy Branch