



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      CNL OLC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain Orders to cancel a Notice to end tenancy for landlord's use of the property, to order the Landlord to comply with the *Act*, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail. The Landlord's Agent confirmed receipt of the hearing documents and copies of the Tenant's evidence.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has a 2 Month Notice been issued and served in accordance with the *Residential Tenancy Act*?
2. If so, has the Landlord met the burden of proof to establish good faith in issuing the Notice?
3. Has the Landlord breached the *Residential Tenancy Act* requiring an Order to comply?

### Background and Evidence

I heard undisputed testimony that the Tenant had entered into a written month to month tenancy agreement with the previous owner of the property that was effective June 1, 2010 for the monthly rent of \$825.00 which included water, electricity, heat, stove and oven, and refrigerator. The property was sold effective January 5, 2011.

The Agent for the Owner confirmed a 2 Month Notice to End Tenancy was issued to the Tenant and was personally served by the Owner to the Tenant on March 24, 2011. The Agent was not prepared to provide testimony or documentary evidence to meet the burden of proof for issuing the Notice or to meet the test of good faith as she was of the opinion that the 2 Month Notice to End Tenancy was a legal document and therefore did not require proof.

The Tenant testified that she was introduced to the new Owner on January 5, 2011 at which time the realtor who represented the owner requested the Tenant sign a new tenancy agreement claiming it was the same as the Tenant's current agreement. The Tenant requested time to review the new document. After reviewing it she refused to sign it because it was different than her existing agreement. Eventually a new written tenancy agreement was signed by the new Owner and the Tenant for the monthly rent of \$825.00 which included water, electricity, heat, stove and oven, and a refrigerator and was effective January 5, 2011.

The Tenant stated that the previous owner and his family continued to reside in the upper unit of the house as tenants and on March 19, 2011 their son approached the Tenant and asked when she was going to pay for natural gas and hydro. She explained that her tenancy agreement included these utilities. Then on March 22, 2011 the Owner and her realtor came to the rental property to get the Tenant to sign a new agreement which did not include the cost of the utilities, reduced the rent by \$25.00 per month and required the Tenant to pay 25% of the total utility costs. She was told that if she agreed to this change she would be allowed to keep her washer and dryer but if she did not agree she would be required to remove her washer and dryer. The Tenant confirmed she owned the washer and dryer and that they were installed in her rental unit in approximately August 2010.

The Tenant stated that she contacted the *Residential Tenancy Branch* on March 23, 2011 for guidance on this matter. That evening the Owner was back at her rental unit requesting that she sign the new tenancy agreement. She informed the Owner of what she learned from the *Residential Tenancy Branch* to which the Landlord replied that she was not happy about. She said the next day the Owner called her and told her that if she did not sign the new contract the Owner would say her father was moving into the rental unit.

The Agent for the Landlord stated that she understood the washer and dryer were in the rental unit prior to the time the new Owner purchased the house however laundry is not indicated on the tenancy agreement as being provided.

### Analysis

A landlord is defined in the *Residential Tenancy Act* as follows:

**landlord**", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Based on the above definition the Owner and the Agent are both considered landlords. In this decision I continue to refer to the parties as Owner and Agent for clarity.

When a Tenant has filed to cancel a notice to end tenancy for Landlord's use of the property and calls into question the "good faith" requirement, the onus lies on the Landlord to prove the two part test as follows:

- 1) The Landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
- 2) The Landlord must not have an ulterior motive as the primary motive for seeking to have the Tenant vacate the rental unit.

The evidence supports the house was sold and the new Owner took possession effective January 5, 2011. Since that date the new Owner has been trying to get the Tenant to sign a new tenancy agreement that would require the Tenant to assume 25% of the natural gas and hydro costs, which are included in the Tenant's monthly rent. When the Owner's attempts failed she began to threaten the Tenant that she would

have to remove her washer and dryer as laundry was not provided for on the tenancy agreement.

In the absence of evidence from the Agent in support of the issuance of the 2 Month Notice to End Tenancy I find there is insufficient evidence to meet the two part test, as listed above, and I hereby cancel the Notice.

With respect to the demands that the Tenant is required to remove her washer and dryer, I note that items listed on the tenancy agreement, such as laundry, relate to items that a provided by the Landlord and included in the cost of the rent. So in order for a landlord to include laundry in the rent and note it on the tenancy agreement the landlord would be required to supply a washer and dryer and would be responsible for the maintenance of them.

In this case the washer and dryer are the Tenant's personal possessions, which were in operation in the rental unit prior to the new Owner purchasing the property. I note there is no provision in the *Residential Tenancy Act*, regulation or tenancy agreement that gives the Owner or Agents (Landlords) the authority to order the Tenant to remove or stop using her personal possessions. Therefore I find the Tenant is within her rights to continue to possess and use her washer and drying within her rental unit.

Section 28 of the Act provides the following:

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The *Residential Tenancy Policy Guideline # 6* provides that a breach to a tenant's quiet enjoyment would include: Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

Such interference might include examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights;
- or allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

I caution the Agent that continued attempts at having the Tenant be responsible for the cost of the utilities or to enter into a new tenancy agreement could be seen as a breach of the Tenant's right to quiet enjoyment for which the Tenant would be at liberty to seek monetary compensation.

The evidence supports the upstairs tenant has approached the Tenant to collect money for the cost of natural gas and hydro. I find it unconscionable for Landlords to have tenants manage the Landlord's business of collecting payments for such things as utilities and I hereby Order the Agents and/or Owner (Landlords) to advise the upstairs tenants to refrain from asking the Tenant for money for the cost of utilities, immediately upon receipt of this decision.

The Tenant has been successful with her claim; therefore I award recovery of the **\$50.00** filing fee. As the Tenant has provided the Owner with post dated cheques for rent the Tenant will be issued a Monetary Order.

It was evident by the Agent's testimony that she was not familiar with the requirements of the *Residential Tenancy Act*. Therefore, I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The 2 Month Notice to End Tenancy for Landlord's Use, dated March 24, 2011, is HEREBY CANCELLED and is of no force or effect.

In accordance with section 62 of the *Act*, I HEREBY ORDER the Agents and Owner (Landlords) to comply with the *Residential Tenancy Act*.

The Tenant's decision will be accompanied by a Monetary Order for **\$50.00**. This Order must be served on the Respondent Landlord, and may be filed in Provincial Court and enforced as an Order of that Court.

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: April 19, 2011.

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Residential Tenancy Branch