



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNL, MNDC, RR, FF

### Introduction

This hearing was scheduled to deal with the tenant's application to cancel a Notice to End Tenancy for Landlord's Use of Property; monetary compensation for damage or loss under the Act, regulations or tenancy agreement; and, authorization to reduce rent payable for repairs, services or facilities not provided. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

In making this application the tenant indicated he was seeking compensation of \$50,000.00 from the landlord. Monetary claims made by filing an Application for Dispute Resolution under the Act are limited to \$25,000.00. Since the tenant's monetary claim exceeds this statutory limit I cannot determine that portion of the dispute and I refused to hear the tenant's monetary claims.

The tenant indicated more than one issue was under dispute in making this application. For disputes to be combined on an application they must be related. At the outset of the hearing the tenant stated that he wished to continue with the tenancy and pursue cancelling the Notice to End Tenancy. I determined that I would not deal with the request for a rent reduction as it is not sufficiently related to the Notice to End Tenancy. Therefore, I will deal with the tenant's request to cancel the landlord's Notice to End Tenancy and I dismiss the tenant's request for a rent reduction with leave to re-apply.

In light of the above preliminary matters, the only matter before me is whether the Notice to End Tenancy should be upheld or cancelled.

### Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be upheld or cancelled?

### Background and Evidence

The tenancy commenced May 1, 2008 and the tenant is required to pay rent of \$1,050.00 on the 1<sup>st</sup> day of every month in accordance with the terms of the tenancy agreement and as found under the dispute resolution decision issued under file no. 774455.

On March 14, 2011 the tenant was personally served with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice). The Notice has an effective date of May 31, 2011 and indicates the reason for ending the tenancy is because:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, child) of the landlord or the landlord's spouse.

The landlord testified that he purchased the residential property while working abroad with the intention of living at the property one day. The landlord described how he is originally from the lower mainland, his family lives in the lower mainland, and now he is about to have business clients in the area. The landlord currently lives in Toronto and the landlord's company has recently entered into a contract to provide business services to clients on the west coast. The landlord's company is currently incorporated under the jurisdiction of Ontario but the landlord claims he is in the process of incorporating federally. The landlord provided a copy of a letter issued by a company (herein referred to as the company) on March 28, 2011 as evidence that the landlord's company has partnered with this other company to provide information technology services.

The tenant was of the position the landlord has issued the Notice in retaliation for the tenant raising issues concerning hydro bills, illegal rent increases, and repairs required at the property. The tenant claimed that when these issues have been raised in the past the landlord's agents have threatened him verbally with eviction. When the tenant paid rent for March 2011 the rent cheque was reduced by an award granted to the tenant under a previous dispute resolution proceeding and the tenant would not pay all of the rent increase requested by the landlord on a recent Notice of Rent Increase. Shortly after providing the landlord's agent with the rent cheques for March through June 2011 the agents returned with the Notice to End Tenancy.

The landlord denied that the above matters are the reason for issuing the Notice. The landlord submitted that the landlord has complied with the previous dispute resolution decision regarding hydro, has withdrawn the non-compliant Notice of Rent Increase,

and the landlord has made efforts to repair the property but the tenant has made accessing the property difficult. The landlord explained that his agents left the property after collecting the rent cheques for March through June 2011 so that they could make photocopies of the cheques before returning the cheques for May and June 2011 to the tenant with the Notice to End Tenancy.

The tenant submitted that he investigated the company that provided the letter to the landlord for this proceeding and determined that the company's address is located in a UPS store and was incorporated very recently in early February 2011. The landlord responded by explaining that the company is a holding company and uses a mailing address at the UPS store but that this is not uncommon as the business is involved in information technology. The landlord submitted that an agreement was entered into with the company on February 6, 2011 before the tenant had even filed the previous dispute application on February 8, 2011.

At the end of the teleconference call the landlord verbally requested that an Order of Possession be provided to him.

The documentary evidence considered in making this decision included the tenancy agreement, the Notice to End Tenancy, the previous dispute resolution decision, the letter from the company dated March 28, 2011, the corporate registry information of the company.

### Analysis

The landlord has given a Notice to End Tenancy to the tenant for a reason provided under section 49(3) of the Act. Section 49(3) provides that

A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord **intends in good faith** to occupy the rental unit.

Residential Tenancy Policy Guidelines provide the policy intent of the legislation in the context of the common law and the rules of statutory interpretation. Residential Tenancy Policy Guideline 2 provides for the good faith requirement in ending a tenancy for landlord's use. It 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 occupy or convert the premises 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. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a “good faith” intent. Rather, the circumstances may be such that dishonesty may be inferred.

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

Upon consideration of the submissions and evidence provided to me by the parties, I accept that the parties have had previous disagreements concerning several matters including hydro, rent increases, late payment of rent, laundry access, repairs, and the landlord's agent accessing the residential property. Accordingly, I find the tenant has reasonable grounds to call into question the landlord's good faith intention in issuing the Notice to End Tenancy that is under dispute. Since the landlord's good faith intention has been successfully called into question, the landlord has the burden to meet the two part test of the good faith intention as described above.

Since the landlord currently lives and works in Toronto I find that the landlord must first establish that he intends to occupy the rental unit within a reasonable amount of time after the tenancy ends. The landlord is relying upon a letter signed by a person who does not provide contact information in the letter and is provided on letterhead from a company that does not provide an office location and only a mailing address located at a UPS store. Further, the letter is written dated March 28, 2011 but does not provide a date as to when the “Cooperative Agreement” was entered into between the two companies. Rather, the letter refers only to the date the Confidentiality Agreement was entered into.

Given the landlord's burden to satisfy the two part good faith requirement, I find the landlord's evidence provided to me for this proceeding to be insufficient to meet this burden. I find the letter from the company insufficient in itself especially since the

content of the letter is unverifiable and the person who signed the letter was not provided as a witness at the hearing. In addition, the landlord did provide other evidence to substantiate that he has initiated the process of registering his company inter-provincially as he claimed.

In light of the above findings, I cancel the Notice to End Tenancy with the effect that this tenancy shall continue.

Conclusion

The tenant's request to cancel the Notice to End Tenancy issued March 14, 2011 has been granted and this tenancy shall continue.

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 20, 2011.

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Residential Tenancy Branch