



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNL OLC FF

### **Introduction**

This is the Tenant's application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Rental Property*, for an Order that the Landlord comply with the Act, regulation or tenancy agreement; and to recover the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent acknowledged service of the Notice of Hearing documents and the Tenant's documentary evidence within the allowable time frames.

The Landlord's agent testified that the Notice to End tenancy issued August 31, 2011, was handed to the Tenant at the rental unit on August 31, 2011.

### **Preliminary Matters**

The Tenant's application filed September 12, 2011, was to cancel the Notice to End Tenancy issued August 31, 2011. The Tenant provided a copy of a subsequent *2 Month Notice to End Tenancy for Landlord's Use of Rental Property* that was issued on September 27, 2011, and stated that it was her intention to have both Notices cancelled during the Hearing.

A tenant may apply to cancel a Notice to End Tenancy issued under Section 49 of the Act within 15 days of being served with the Notice. The Landlord's agent testified that the Notice issued September 27, 2011, was handed to the Tenant on September 27, 2011 at the rental unit and therefore the Hearing date is within the 15 day period allowed. It was clear that the Tenant intended to cancel both Notices to End Tenancy. Therefore, I amended the Tenant's application to include an application to cancel the Notice issued September 27, 2011.

The Tenant's application is also for an Order that the Landlord comply with the Act, regulation or tenancy agreement. The application form clearly indicates that the applicant must state the section of the Act or regulation which she seeks the Landlord to comply, or to provide a copy of the tenancy agreement if she seeks compliance with the tenancy agreement. The Tenant did not provide the section or a copy of the tenancy

agreement. The Tenant did not provide sufficient details in the Details section of her application and therefore, this portion of her application is dismissed.

**Issue(s) to be Decided**

(1) Should the Notices to End Tenancy issued be cancelled?

**Background and Evidence**

The Landlord's agent gave the following testimony:

The Landlord's agent stated that he and the Landlord currently reside on a boat and that they have decided that they need to live in one of the rental units at the rental property, for use as a residence and an office. The Landlord's agent testified that his wife was looking forward to having access to a bath.

He stated that the Landlord and he looked at all the rents being paid and decided to choose the rental unit that was paying the least amount in rent.

The Tenant gave the following testimony:

The Tenant testified that the Landlord told her that if she paid more money for rent, she could remain in the rental unit.

The Tenant testified that the Landlord was the new owner of the rental property and that the Tenant received a letter from the Landlord stating that no tenants were going to be displaced under the new Landlord. The Tenant provided a copy of the letter in evidence.

The Tenant stated that the Landlords recently rented out two vacant suites in the rental unit and that the new tenants were going to pay \$200.00 and \$250.00 more in rent for the suites.

The Tenant stated that she has no problem paying a rent increase, but that she thought the increases should be made in accordance with the Act.

The Tenant stated that she was aware that the Landlords were intending on renovating the rental property, and that she recognized that if she was successful in cancelling the Notices to End Tenancy she may receive another notice to end the tenancy in the future for renovations. The Tenant stated that she would be prepared to negotiate a later end of tenancy date.

The Landlord's agent gave the following reply:

The Landlord's agent denied telling the Tenant that she could stay if she paid more rent. He testified that he told the Tenant that he and the Landlord had chosen to live in the Tenant's suite because it was the cheapest rent.

The Landlord's agent acknowledged writing the letter on August 26, 2011, but stated that the Landlords changed their minds after writing the letter.

The Landlord's agent stated that the Landlord was not interested in negotiating a different end of tenancy date and that the Landlord wished vacant possession of the rental unit on November 30, 2011. The Landlord's agent did not specifically request an Order of Possession.

**Analysis**

In an application such as this, where the Landlord has issued a Notice to End Tenancy for Landlord's Use of Property, the burden is on the Landlord to establish that she truly intends to do what she indicated on the Notice to End Tenancy. The Landlord must establish that she does not have an ulterior motive for ending the tenancy as her primary motive.

The Notice to End Tenancy issued August 31, 2011, does not disclose a reason for ending the Tenancy and therefore, I find it is not a valid Notice. The Notice issued August 31, 2011, is therefore cancelled.

With respect to the Notice issued September 27, 2011, I find that there is insufficient evidence that the Notice should be cancelled. On page 2 of the Notice, the Landlord alleges that "the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse)". There was insufficient evidence that the Landlord was attempting to remove the Tenant in order to get more rent for the rental unit. The Landlord's agent stated that he and the Landlord had chosen to live in the Tenant's suite because it made the most financial sense. The Landlord's agent testified that the rental property is going to be renovated in the future. I find it probable that he and the Landlord would move from a boat to the rental property to set up office for the impending renovations and to enjoy a full bathroom and more space. I find the Landlord's business decision to move into the rental unit that provides the least revenue is not indicative of a bad faith intention. Therefore, the Tenant's application to cancel the Notice to End Tenancy issued September 27, 2011, is dismissed.

The Notice to End Tenancy issued September 27, 2011, was served on the Tenant on September 27, 2011, and therefore the effective end of tenancy date is November 30, 2011.

During the Hearing, the Tenant stated that she was aware of the compensation equivalent to one month's rent allowed under Section 51(1) of the Act.

Both parties are hereby advised of the provisions of Section 51(2) of the Act, which states:

**Tenant's compensation: section 49 notice**

51 (2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The Tenant has not been successful in her application to cancel the Notice to End Tenancy issued on September 27, 2011, and therefore I order that the Tenant bear the cost of the filing fee.

**Conclusion**

The Tenant's application to cancel the *2 Month Notice to End Tenancy for Landlord's Use of Property*, issued September 27, 2011, is dismissed.

The Tenant must give vacant possession of the rental unit to the Landlord by **1:00 p.m., November 30, 2011.**

Dated: October 07, 2011.

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Residential Tenancy Branch