



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, MNDC, RP, LRE, FF

### Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for landlord's use of property, to order the landlord to make repairs, money owed or compensation for damage or loss, suspend or set conditions on the landlord's right to enter and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

### Preliminary Matter to be Decided

The landlord start the start of the hearing made a request to discuss the previous hearing that was conducted on September 7, 2011 under file 775862. The landlord stated that they had never received the hearing documents for the adjourned hearing and that was why they had not attended. The landlord stated that they only found out about the hearing after the tenant send them a letter stating that she would not be paying rent as she had been awarded compensation. The landlord stated that they then came to the Residential Tenancy Branch office and were advised by staff to wait until they were served with the tenant's monetary order and then come back and file for a review.

The tenant stated that the landlord had been served with the hearing documents for the adjourned hearing twice; once by mail by from the Residential Tenancy Branch and again a week later as page 58 in the tenant's evidence package.

Residential Tenancy Branch audit notes show that the documents for the adjourned hearing were sent to the tenant only, for service upon the landlord. The audit notes show that on July 26, 2011 the tenant called in to the Residential Tenancy Branch, stating that she had received the documents for the adjourned hearing, asked what

steps needed to be taken and was advised by the Residential Tenancy Branch that she had to serve the landlord with a set of the hearing documents for the adjourned hearing.

The landlords both maintain that service of the documents was never completed and that they would have attended the hearing had they been made aware of the date and time.

As much of the current application relates to compensation and is directly tied to the previous hearing, the tenant's claim related to the notice to end tenancy will be heard and the remainder of the tenant's application will be dismissed with leave to reapply.

### Background and Evidence

Matters related to this tenancy were heard August 16, 2011 under file 775862. This was an application by the tenant application for a monetary order for money owed or compensation for damage or loss and the tenant was awarded compensation in part for lawn care and deck repair. The tenant in this application was seeking compensation for lawn care, deck repair and lawnmower repair costs.

This tenancy began October 1, 2008 with current monthly rent of \$1350.00 and the tenant paid a security deposit of \$675.00. On September 20, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for landlord's Use of Property:

- 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.

The tenant testified that the landlord had given her the notice to end tenancy in retaliation for personal issues between the tenant and landlord. The tenant stated that the landlord's prior notice was set aside and that she believed that the landlord was not acting in good faith with this notice. The tenant referred to issues related to the landlord's dog becoming ill and that it was after this incident that the landlords stopped maintaining the yard and ignored the tenant's requests for repairs. The tenant stated that it was because she had filed for dispute resolution that the landlord had previously tried and was still trying to get her out of the rental unit.

The landlords both testified to the fact that their personal relationship had come to an end and that the rental unit was required for one of them to move into. The landlord's stated that with the previous notice they had initially thought they would sell the property and buy a new property for one of them to live in but that it made better financial sense for one of them to live in the rental unit.

The tenant was adamant that the landlords were being retaliatory and that they had told her they would occupy the rental unit if that was the 'only way they could get her out'; the landlords denied this allegation. The landlord stated that he thought highly of the

tenant and that if they did not need the rental unit they would not have served the notice, the landlord also stated that he would happy to provide excellent references for the tenant to prospective landlords.

The tenant stated that she had seen other decisions where this type of notice had been set aside because the landlord's were being retaliatory. The tenant referred to the 'two part test' required in giving this type of notice maintaining that the landlords had ulterior motives for having the tenant vacate the rental unit and that they were not in fact, acting in good faith.

The tenant stated that because of her situation there was no way she could possibly vacate in a month's time and the landlords in this hearing agreed to extend the end of tenancy date to December 31, 2011.

### Analysis

The landlord at the start of this hearing brought up matters related to file 775862 and that they did not have the opportunity to attend that hearing due to not being served with the hearing documents. The landlord's stated that as the previous file and this file are for the same issues they should have the opportunity to dispute the tenant's claim. As the claim for repairs and compensation in file 775862 are related to the repairs and compensation the tenant is seeking in this file, the notice to end tenancy will be ruled on and the balance of the tenant's application dismissed with leave to reapply.

The landlord understands that they are at liberty to apply for a review of file 775862 and a copy of this decision included as part of their evidence.

### Residential Tenancy Branch Rules of Procedure, **RULE 10 – INTRODUCTIONS AND PRELIMINARY MATTERS:**

*10.3 Preliminary matters Upon request, the Dispute Resolution Officer must consider any preliminary matters, including but not limited to questions of jurisdiction, substituted service, adjournment, adding a related matter, amending the application, and summoning a witness or document*

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to have the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property set aside.

Residential Tenancy Policy **Guideline 2. Good Faith Requirement** speaks to:

*The Residential Tenancy Act<sup>1</sup> and the Manufactured Home Park Tenancy Act<sup>2</sup> allow the landlord to end a tenancy agreement if the landlord intends, in specified instances to change the use of the residential unit or manufactured home park site. The specified circumstances in the Residential Tenancy Act are as follows:*

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit;*

*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.*

I recognize that the relationship between the tenant and landlord's has deteriorated the past few months, however I do accept the testimony of the landlord's in regards to one of them needing the rental unit to move into as their relationship has ended. I also accept the landlord's testimony that for financial reasons they are utilizing this property for one of them to occupy instead of selling it and purchasing a new property.

The landlord's both clearly understand the requirement for serving such a notice, that 1 month's rent compensation is required by the Act and that if they do not comply with the Act and utilize the rental unit as stated on the notice, that the tenant may come back to this office and file for 2 month's compensation.

The landlord's have agreed to extend the end of tenancy date to December 31, 2011 to allow the tenant more time to find housing and arrange moving.

The tenant's application to set aside the notice to end tenancy is hereby dismissed without leave to reapply with the resulting effect that the tenancy will end on **December 31, 2011 at 1:00 PM.**

The remainder of the tenant's application has been dismissed with leave to reapply.

As the tenant has not been successful in their application the tenant is not entitled to recovery of the \$50.00 filing fee.

### Conclusion

The landlord's notice to end tenancy for landlord's use of property dated September 20, 2011 is upheld with the resulting effect that the tenancy will end on **December 31, 2011 at 1:00 PM.**

The remainder of the tenant's application has been dismissed with leave to reapply.

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: November 1, 2011.

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Residential Tenancy Branch