



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

At the hearing, it became evident that further documentary evidence was required from the landlord in order to make a determination on the matter at issue. The landlord was given one week from the date of the hearing to provide a copy of this evidence to both the Residential Tenancy Branch and to the tenant and the tenant was given a further week in which to provide her written response to both the landlord and to the Branch. The landlord's evidence was received on December 14 and no further evidence was received from the tenant.

### Issue to be Decided

Should the notice to end tenancy be set aside?

### Background and Evidence

The parties agreed that on November 24, the tenant was served with a 2 month notice to end tenancy which alleged that the rental unit is owned by a family corporation and will be occupied by an individual whose close family members own all the voting shares. The landlord testified that the family corporation is owned by he and his siblings and that his sister, who owns 25% of the voting shares, desires the unit for her daughter. The landlord was asked to obtain a letter from the daughter confirming her intention to move into the rental unit. An email from the daughter dated December 12 was entered into evidence which confirmed that she intended to move into the unit on February 1, 2012.

The tenant questioned by the landlord had chosen her unit for the daughter. The landlord explained that there were only 3 two bedroom units in the building and that the daughter and her roommate were not comfortable on a ground floor apartment and the building manager occupied the other two bedroom unit.

The tenant accused the landlord of wanting to re-rent the unit at a higher rate as she was paying lower rent than others in the building. The landlord responded that if he wished to raise her rent, he would have pursued an application for an additional rent increase through the Residential Tenancy Branch and stated that he wouldn't be receiving substantially more rent from the daughter.

### Analysis

In order to establish grounds to end the tenancy, the landlord must prove that he intends in good faith to use the rental unit for the stated purpose. I accept the letter from the daughter as authentic and an expression of her intent to occupy the unit. I further accept that as she has a roommate, she would be more comfortable in a two bedroom unit and it is reasonable that 2 single women would not want to live in a ground floor apartment. I further accept that the landlord would not want to displace his building manager. I find that the landlord intends for the daughter to occupy the rental unit.

Although the tenant alleged that the landlord wished to evict her because she was paying low rent, I find insufficient evidence to prove that this is the case. The landlord could easily have applied for an additional rent increase and there is no history between the parties which suggests that he has attempted to evict her and by the tenant's own written narrative, they enjoyed a successful landlord/tenant relationship. The tenant acknowledged having received a rent increase on October 31, which suggests that less than a month before the notice to end tenancy was served, the landlord had every intention of continuing the tenancy. It stands to reason that the daughter required accommodation and when the landlord learned of that need, chose the rental unit as the most appropriate accommodation. For these reasons, I accept that the notice was given in good faith.

I note that the tenant provided a note from her doctor which advised that she could not move from the apartment due to depression and recent injury. The tenant's medical or emotional condition is not a relevant consideration under the Act.

I find that the landlord has established grounds to end the tenancy and I therefore dismiss the tenant's claim to set aside the notice.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession.

Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The tenant's claim is dismissed and the landlord is granted an order of possession.

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: December 29, 2011

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Residential Tenancy Branch