



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNL, FF

### Introduction

The hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution.

At the hearing the Tenant indicated that she would like her Application for Dispute Resolution amended so that the Association is the only named Respondent. The Agent for the Landlord did not oppose this request and the Application for Dispute Resolution was amended accordingly.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Both parties indicated that they were prepared to proceed with the hearing on this date. The hearing was concluded after both parties clearly indicated they had presented all of their evidence.

### Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy that was served on the Tenant should be set aside and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of filing this Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2007 and that they entered into a fixed term tenancy agreement, the fixed term of which ended on October 31, 2008.

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution hearing on September 09, 2011, at which time the Landlord was ordered to make repairs to the rental unit by October 31, 2011. A copy of the decision from this hearing was submitted in evidence.

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution hearing on November 07, 2011, at which time it was determined, in part, that previously ordered repairs had not been completed and the Landlord was ordered to make repairs to the rental unit by November 25, 2011. A copy of the decision from this hearing was submitted in evidence.

The Landlord and the Tenant agree that this tenancy was the subject of a reconvened dispute resolution hearing on November 28, 2011, at which time it was determined, in part, that the repairs to the rental unit had been completed and that the Tenant could move back into the rental unit. A copy of the decision from this hearing was submitted in evidence.

The Landlord and the Tenant agree that the Tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property, which declared that the Tenant must vacate the rental unit by January 31, 2011. The reason for ending the tenancy that was stated on the Notice was that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse. The Agent for the Landlord stated that the Notice to End Tenancy was served on November 29, 2011 and the Tenant stated that it was served on November 30, 2011.

The Agent for the Landlord stated that this rental unit is owned by a benevolent association; that the benevolent association consists of people with one of two surnames; that members of the association pay a token membership fee; and that every member of the association has voting rights. The Tenant stated that she has never been told the benevolent association is a family association, however she does not dispute any of the testimony regarding the nature of the benevolent association.

The Agent for the Landlord stated that the benevolent association currently hosts social activities on the third floor of this complex for members of the association and guests of the association and that they wish to use the additional space on the second floor to host similar events.

The Tenant stated that the Landlord currently has 3100 square feet of space on the third floor; that the space on the third floor never seems overly crowded; and she does not believe that the Landlord needs an additional 3100 square feet of space for social events.

The Tenant argued that the Landlord did not serve the Notice to End Tenancy in good faith. She contends that the relationship between the two parties is strained; that the Landlord is retaliating against her for attempting to have her rental unit repaired; and that the timing of the Notice to End Tenancy indicates that the Notice was served because the Landlord is displeased with the Tenant.

The Agent for the Landlord agreed that there has been conflict between the parties but he contends the Landlord is just proceeding with long term plans to reclaim this space for its own use. He stated that he has previously told the Tenant that the Association may need her rental unit in the future but he does not recall when this conversation took place. He stated that the Association has always intended that this be a short term tenancy, as evidenced by the eighteen month term of the initial tenancy agreement.

The Tenant stated that one or two years ago she had a conversation with the Agent for the Landlord in which he told her the Association may ask her to move to the third floor.

At this hearing the Agent for the Landlord attempted to argue that the Tenant misrepresented the problems with the rental unit. He was prevented from making that argument at this hearing, as that matter has been determined at a previous proceeding.

The Tenant argues that this Notice to End Tenancy is another attempt to end her tenancy and that it was served, in part, because the Landlord failed in its attempt to end her tenancy by serving her with the Ten Day Notice which was set aside at the hearing on November 07, 2011.

### Analysis

On the basis of the information provided on the Notice to End Tenancy, it appears the Landlord has attempted to end this tenancy pursuant to section 49(3) of the *Act*, which stipulates that a landlord who is an individual may end a tenancy if the landlord if the landlord or intends in good faith to occupy the rental unit. I find that the Landlord is a benevolent association and does not have the right to end the tenancy pursuant to section 49(3) of the *Act*.

I find that the Landlord should have attempted to end this tenancy pursuant to section 49(6)(f) of the *Act*, which stipulates that a landlord may end if the landlord has all of the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit to a non-residential use.

As the Landlord did not cite the proper reason for ending the tenancy on the Notice to End Tenancy, I grant the Tenant's application to set aside the Notice to End Tenancy for Landlord's Use of Property that is the subject of this dispute.

Even if the Notice to End Tenancy for Landlord's Use of Property properly cited section 49(6)(f) of the *Act* as the reason for ending this tenancy and the Landlord was able to

establish that it had all of the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit to a non-residential use, I would set aside the Notice to End Tenancy on the basis of “bad faith”, which was raised by the Tenant.

To establish “good faith” the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy AND the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises. A landlord is acting in bad faith when a landlord intends to use the space for his/her own purposes but the intention is motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant or to end the tenancy for reasons not cited on the Notice to End Tenancy, for example, then the landlord is not acting in “good faith” intent.

In these particular circumstances I find that, on the balance of probabilities, the Landlord was not acting in good faith when it served the Tenant with this Notice to End Tenancy. Rather, I find that it is likely that the Notice to End Tenancy was served as a form of retaliation against the Tenant for filing several Applications for Dispute Resolution.

The undisputed evidence is that this tenancy was the subject of a dispute resolution proceeding on September 09, 2011, which was initiated by the Tenant. At the conclusion of this hearing the Landlord was ordered to make repairs to the rental unit by October 31, 2011 and it was determined that she would only be required to pay \$900.00 in rent for November of 2011. Although it is not specifically stated in the Dispute Resolution Officer's decision of September 09, 2011, it is reasonable to conclude that the Dispute Resolution Officer concluded that rent would not be due for August, September, or October of 2011, as the Tenant was not living in the unit.

The undisputed evidence is that this tenancy was the subject of a dispute resolution proceeding on November 07, 2011, which was initiated by the Tenant. It appears that the Landlord argued at this hearing that the Tenant has made false claims about the presence of asbestos in the rental unit and that the concrete material in the bedroom is safe if it remains undisturbed. The Dispute Resolution Officer at that hearing ordered the Landlord to “follow the recommendations put forth by the lab and Worksafe BC” and to “have the bedroom wall encapsulated and painted by a qualified contractor no later than November 25, 2011”.

At the hearing on November 07, 2010 the Dispute Resolution Officer set aside a Notice to End Tenancy for Unpaid Rent that the Landlord served to the Tenant, after she determined that the Tenant was not obligated to pay the rent the Landlord was claiming.

I note that the Agent for the Landlord attempted to argue that the Tenant had misrepresented the need for repairs at this hearing, although he was prevented from giving evidence on that issue as it has been previously determined. I find that the Landlord's obvious disagreement regarding the need for repairs to the rental unit and its initial reluctance to make those repairs supports the Tenant's position that the Landlord is attempting to end this tenancy in retaliation for the Tenant's requests for repairs.

I find that the Ten Day Notice to End Tenancy for Unpaid Rent that was served to the Tenant on October 12, 2011, causes me to conclude that the Landlord has attempted, on at least one occasion, to end this tenancy without proper grounds. In reaching this conclusion I was heavily influenced by my conclusion that the Landlord knew, or should have known, that the Tenant was not obligated to pay rent for August, September, or October and that the Landlord should therefore have known that it could not serve the Landlord with the Ten Day Notice to End Tenancy for Unpaid Rent. I find that this blatant disregard for the *Act* is a form of intimidation and further supports the Tenant's position that the Landlord is attempting to end this tenancy in retaliation for the Tenant's requests for repairs.

Finally, I find that the timing of the service of the Notice to End Tenancy for Landlord's Use of Property is highly suspect. This Notice was served within two or three days of the hearing on November 28, 2011, at which the Dispute Resolution Officer determined the Tenant could fully occupy the rental unit and that she only had to pay \$950.00 for the month of December of 2011.

When all of the aforementioned issues are considered collectively, I find, on the balance of probability, that the Landlord as attempting to end this tenancy because of the on-going conflict between the parties. I therefore find that the Two Month Notice to End Tenancy for Landlord's Use of Property was not served in good faith.

In making this determination I have placed little weight on the fact that the parties have previously discussed the possibility of the Tenant moving. I find that this discussion is largely irrelevant, the parties cannot agree on the content of the discussion; it was not a recent discussion; and it does not dissuade my belief that the timing of this Notice to End Tenancy strongly supports the Tenant's position that it was retaliatory.

In making this determination I have placed little weight on the fact that the parties initially entered into a "short term" tenancy agreement for a fixed term of eighteen months. I find that a fixed term tenancy agreement of eighteen months is longer than most fixed terms and does not, therefore, imply that the parties are anticipating an early end to the tenancy. I further find that the tenancy continued past the end of that fixed term; that it has lasted for over four years; and that it can in no way be considered a short term tenancy.

### Conclusion

I grant the Tenant's application to set aside the Notice to End Tenancy.

I authorize the Tenant to reduce her rent payment for February of 2012 by \$50.00 in compensation for the fee she paid to file this Application for Dispute Resolution.

**I have made a determination in regards to good faith and included it in this decision for the specific purpose of providing some resolution to the on-going conflict between the parties. The Landlord and the Tenant are reminded that the**

**Tenant has the right to the quiet enjoyment of her rental unit, which includes freedom from unreasonable disturbances. The Tenant retains the right to file an Application for Dispute Resolution seeking compensation for a breach of this right if the Landlord serves her with another Notice to End Tenancy that is not served in good faith. The Landlord is cautioned that serving another Notice to End Tenancy for Landlord's Use of Property in the near future could be considered an act of bad faith.**

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: January 05, 2012.

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Residential Tenancy Branch