



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

CNL, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel 3 Two-Month Notices to End Tenancy for Landlord's Use dated March 28, 2012 purporting to be effective May 31, 2012. The Notices pertained to 3 different units in the same complex all rented by the tenant.

Both the landlord and the tenant appeared.

### **Issue(s) to be Decided**

The tenant was seeking to cancel the Two-Notice for Landlord's Use Therefore the issue to be determined based on the testimony and the evidence is:

- Are the Two-Month Notices to End Tenancy for Landlord's Use supported under the circumstances?

The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use is supported by the Act and issued in good faith.

### **Preliminary Matter**

The landlord testified that the address provided by the tenant on her three applications was not her genuine residential address. After giving this testimony, the landlord proceeded to repeatedly demand that the tenant produce her correct residential address forthwith.

The tenant testified that the address given was her residential address for service.

Despite the tenant's testimony, the landlord continued to disrupt the proceedings by demanding that a different residential service address than that already provided by the tenant be given to the landlord.

### **Background and Evidence**

The tenant had made three separate applications to cancel each one of the Two Month Notices to End Tenancy for Landlord's Use that were issued on March 28, 2012, with respect to the three units rented by the tenant.

During the preliminary steps of the hearing, it was discovered that one of the tenant's 3 application files for the hearing was not before me. However, the missing application was later found and the three applications were joined.

The three Notices to end Tenancy for Landlord's Use indicated that the landlord was seeking to end the tenancy for landlord's use because:

*"The landlord has all the necessary permits and approvals required by law to demolish the rental unit or to repair the rental unit in a manner that requires the rental unit to be vacant"*

The tenant raised the issue of bad faith. The tenant and submitted into evidence written material, including copies of the Notices dated March 28, 2012. No evidence of any kind was submitted or served by the landlord.

At the outset of the testimony, the landlord's counsel announced that the landlord was waiving all three of the Two Month Notices to End Tenancy for Landlord's Use.

Before the tenant was able to respond to the issue of waiver, the landlord's counsel stated that they were ending their participation. According to the landlord, since they had already waived the Notices, the hearing would not continue and they were therefore departing.

As the landlord's party was leaving, the landlord's counsel voiced his dissatisfaction with the fact that the tenant had apparently been permitted to sit in the hearing room prior to the landlord's arrival. The landlord evidently felt that this was not proper procedure. The landlord stated that, in the interest of fairness, both parties should arrive and be escorted into the hearing room by Residential Tenancy Branch staff, simultaneously. The landlord was advised that he was at liberty to take up this concern with the Branch.

After the landlord departed, the hearing proceedings continued in the respondent landlord's absence.

The tenant testified that the landlord had issued the Notices to End Tenancy for Landlord's Use in reprisal against the tenant as part of a persistent harassment campaign to drive her from her home.

The tenant testified that in the past the landlord had made several unsuccessful attempts to illegally evict her in violation of the Act. The tenant stated that the current Notices were completely without merit and were issued in bad faith. The tenant is requesting that all 3 of the Two Month Notices to End Tenancy for Landlord's Use dated March 28, 2012, be cancelled.

### **Analysis**

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that would require the rental unit to be vacant.

I find that the landlord issued three Two Month Notice to End Tenancy for Landlord's Use and served these on the tenant.

Section 49 (8) states that a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice. I find that the tenant did make an application to cancel the Notice within the required statutory deadline.

I find that a landlord bears the burden of proof to justify that any Notice to end tenancy is valid and warranted. In regard to a Notice to End Tenancy under section 49 of the Act, when the issue of bad faith is alleged, it is incumbent on the landlord to prove that the landlord complied with the "good faith" requirement under the Act.

I find that the landlord did not submit or present sufficient evidence that would prove that any of the Notices to End Tenancy for Landlord's Use were justified.

With respect to the landlord's stated position that they decided to waive the three Notices, I find that a landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. If both the landlord and the tenant agree, a Notice to End Tenancy may be withdrawn or abandoned with the consent of both parties prior to its effective date.

However, I find that the landlord did not obtain the consent of the other party to the proposed waiver of the Notices. Apparently the tenant had never been approached prior to the hearing date with respect to the landlord's possible intention to withdraw of the three Notices and I find that no attempt was made by the landlord during the hearing to obtain an agreement and no consent, implied or otherwise was evident on the tenant's part.

In fact, the landlord suddenly announced that they were discontinuing their participation in the hearing and the landlord abruptly abandoned the proceedings prior to the

conclusion of the hearing. The applicant tenant was forced to continue the hearing in the absence of the respondent landlord.

Given the above, I do not accept the landlord's proclamation that the Two Month Notices to End Tenancy for Landlord's Use had been withdrawn.

However, I do find that the tenant's request that these three Notices to End Tenancy for Landlord's Use must be cancelled. I find that the Two Month Notices to End Tenancy for Landlord's Use have no merit and I accept the tenant's position that they were issued in bad faith. I further find that the landlord has failed to meet the requisite burden of proof to justify issuing the Two Month Notices to End Tenancy for Landlord's Use on March 28, 2012.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I order that the three Two-Month Notices to End Tenancy for Landlord Use dated March 28, 2012 are hereby cancelled and of no force nor effect. The tenant is entitled to be reimbursed the \$150.00 cost of the applications and may deduct this amount from the next rental payment owed to the landlord as a one-time abatement.

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 23, 2012.

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Residential Tenancy Branch