



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for landlord's use of property.

The landlord and one of the named tenants attended the conference call hearing, and both provided testimony.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of property?

### Background and Evidence

The landlord testified that this tenancy began on October 5, 2011 and the tenant still resides in the rental unit.

The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, however a copy was not provided for this hearing. The landlord testified that the notice was sent to the tenant by registered mail. The notice stated that the rental unit has been sold, all conditions on which the sale depends have been satisfied and the purchaser has asked the landlord in writing to issue the notice because the purchaser or a close family member of the purchaser intends to occupy the rental unit. The landlord testified that a condition remains outstanding, being a home inspection, and the landlord does not have a request from the purchaser in writing to issue the notice.

The landlord also testified that the rental unit requires electrical upgrades which must be done before the home inspection is completed and the condition can be removed. Further, the rental unit must be vacant in order for the electrical upgrades to begin.

The tenant testified that the notice to end tenancy has not been received by the tenant, although the tenant was given notice by Canada Post that a registered mail package was awaiting pick-up. The tenant missed it due to travel with the tenant's children for sporting events. The tenant called the landlord and asked for a copy but the landlord refused to provide another copy.

### Analysis

The *Residential Tenancy Act* states that:

**49 (5)** A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
  - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The *Act* also permits a landlord to give notice to end a tenancy if the landlord has all necessary permits and approvals required by law to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

In this case, I find that the landlord has issued the notice to end tenancy prematurely; the subjects for the sale of the rental unit have not been satisfied, and were not satisfied at the time the notice to end tenancy was issued to the tenant. Further, the landlord has not provided any evidence that the rental unit needs to be vacant to complete the electrical upgrades.

The *Act* also requires a tenant to dispute a notice to end tenancy within 15 days after the date the tenant receives the notice, and the tenant has not done so. However, the landlord has not provided a copy of the notice to end tenancy or the tenancy agreement, and I have no evidence before me to establish that the landlord is entitled to an Order of Possession, and the landlord's application must be dismissed.

The landlord is at liberty to issue another notice to end tenancy once the conditions have been removed for the sale of the rental unit, but must receive a written request

from the purchaser prior to issuing the notice, pursuant to Section 49 (5) above. Alternatively, the landlord may issue a notice to end tenancy if all permits and approvals required by law to complete the electrical upgrades have been obtained, however, if the tenant disputes the notice, the landlord must be prepared to prove that the rental unit needs to be vacant to complete the upgrades. In either case, the landlord may apply for an Order of Possession to be effective on the last day of the tenancy stated in the notice to end tenancy and provide a copy of the notice to end tenancy for the hearing.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without 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: May 28, 2012.

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Residential Tenancy Branch