



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, FF, MT, CNL

### Introduction

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for the landlord's use of the property and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for landlord's use of property, and for an order extending the time to make such an application.

The tenant attended the conference call hearing and gave affirmed testimony, however, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on October 6, 2012, and despite having filed an application for dispute resolution and obtaining a hearing date from the Residential Tenancy Branch, no one for the landlord attended. The tenant testified to serving the documents by registered mail on October 6, 2012 and provided a copy of a Canada Post receipt to substantiate that testimony. The line remained open while the phone system was monitored for 10 minutes and the only participant who attended the hearing was the tenant.

The landlord did not attend to prove the landlord's claim and therefore, the landlord's application is hereby dismissed in its entirety without leave to reapply.

The tenant provided evidentiary material prior to the commencement of the hearing, however the landlord provided none. All testimony and evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

The issues remaining to be decided are:

Is the tenant entitled to more time to dispute a notice to end tenancy?

Is the tenant entitled to an order cancelling the landlord's notice to end the tenancy?

### Background and Evidence

The tenant provided evidentiary material prior to the commencement of the hearing which included a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 1, 2012. The notice states that the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant, and contains an expected date of vacancy of October 30, 2012. The tenant stated that the landlord has not obtained any permits and has no intentions of renovating or demolishing the rental unit. The tenant questions the good faith intent of the landlord stating that the landlord wants the rental unit for orchard workers.

The tenant further testified that upon receiving the notice to end tenancy the tenant attempted to find a place to live, but was not successful. The tenant stated that the only accommodation that the tenant could find was too costly for the tenant's finances and then realized that the only recourse was to dispute the notice to end tenancy.

### Analysis

In the circumstances, and in the absence of any testimony or evidence to the contrary, I accept that the tenant attempted to find alternate accommodation but was not successful and the tenant then realized that the only recourse was to dispute the notice to end tenancy issued by the landlord.

The *Residential Tenancy Act* states that the director may extend a time limit established by the *Act* only in exceptional circumstances. The *Act* further states:

**66** (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the notice.

In this case, the tenant received the notice to end tenancy on September 10, 2012 and the *Act* requires the tenant to dispute the notice within 15 days after the date the tenant receives the notice. The notice contains an effective date of vacancy of October 30, 2012 and the tenant's application was filed with the Residential Tenancy Branch on October 4, 2012.

The landlord has not disputed that the tenant be given more time to dispute the landlord's notice, and I hereby order that the tenant be permitted more time to dispute the notice to end tenancy.

I further accept the testimony of the tenant that the landlord has not acted in good faith based on the fact that the landlord has not attended this hearing to prove the landlord's good faith intentions or prove that all permits and approvals are in place to demolish or renovate the rental unit in a manner that requires the rental unit to be vacant.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I further grant the application of the tenant for more time to dispute a notice to end tenancy than provided for in the *Residential Tenancy Act*, and I order that the notice to end tenancy has been disputed sufficiently for the purposes of the *Act*.

I further order that the notice to 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord dated September 1, 2012 is hereby cancelled.

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 07, 2012.

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Residential Tenancy Branch