



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL

### Introduction

This was the hearing of an application by the tenant to cancel a two month Notice to End Tenancy for landlord's use. The hearing was conducted by conference call. The tenant and the named landlord participated in the hearing.

### Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

### Background and Evidence

The rental unit is the upper floor of a house in Abbotsford. The tenancy began in 2011. The landlord served the tenant with a two month Notice to End Tenancy for landlord's use. The Notice is dated November 16, 2012 and it requires the tenant to move out of the rental unit by February 1, 2013. The stated reason for the Notice to End Tenancy is 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.

At the hearing the landlord said that he wants to move into the rental unit. He also said that he is having difficulties with his wife and that is why he wants to move into the rental unit. The landlord did not submit any documents or call upon any other witness to testify on his behalf.

The tenant referred me to previous applications by her to cancel Notices to End Tenancy given by the landlord. She said that she has rented the upper floor of the house since June 2011 and the landlord rented the basement as a separate unit until the City determined that it was an illegal suite and ordered that it be removed. After this event the landlord served the tenant with a Notice to End Tenancy for unpaid rent. The tenant disputed the Notice and it was canceled by an arbitrator after a hearing on August 24, 2012. The landlord gave the tenant another Notice to End Tenancy on October 1, 2012. This Notice was a one month Notice to End Tenancy for cause. The tenant applied to cancel this Notice to End Tenancy and a hearing was held on November 8, 2012. The arbitrator cancelled the Notice to End Tenancy. She determined that the grounds alleged by the landlord for ending the tenancy were unfounded. She cautioned the landlord that issuing repeated Notices to End Tenancy

that are without merit may be grounds for an award of compensation to the tenant for loss of quiet enjoyment..

The tenant submitted evidence to show that the landlord owns four residential properties, one of which he occupies with his wife. She said that since the basement suite was declared to be illegal the landlord has made concerted efforts to either get the tenant to pay more rent for the rental property or to force her to move out. She said that this Notice, given one week after the previous Notice was cancelled has been given in bad faith because the landlord has no genuine intention to live in the rental unit, but simply wants to evict her so he can re-rent the entire property for a larger monthly rent.

#### Analysis and conclusion

The history of the tenancy, the landlord's previous attempts to evict the tenant on other grounds and the timing of this latest Notice to End Tenancy, given one week after the landlord's previous failed attempt to evict the tenant causes me to view this Notice to End Tenancy with suspicion. The landlord has not provided any supporting evidence to lend credence to his bald statement that he intends to move into the rental unit. If, as the landlord obliquely claimed, he is having marital difficulties that make it necessary for him to move out of his matrimonial home I would expect more convincing evidence from him, or from other witnesses. The grounds advanced by the landlord just one week before this two month Notice was given were entirely contradictory to the grounds for the Notice that is before me. I find that the landlord does not have a good faith intention to occupy the rental unit. I therefore order that the Notice to End Tenancy dated November 16, 2012 be, and is hereby cancelled. The tenancy will continue.

The tenant is entitled to recover the \$50.00 filing fee for this application. She may deduct the said sum from a future instalment of rent payable to the landlord

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 09, 2013.

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Residential Tenancy Branch

