



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, his advocate and the landlord.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in his Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Section 49 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began in April 2006 and is a month to month tenancy for a current monthly rent of \$558.00 due on the 1<sup>st</sup> of each month. The parties agree the tenant paid a security deposit and pet damage deposit but disagreed on the amounts.

The tenant submitted into evidence the following documents:

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on December 27, 2012 with an effective vacancy date of February 28, 2013 citing 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;
- A copy of a Dispute Resolution Decision issued on December 4, 2012 dismissing the tenant's monetary claim for compensation for loss of quiet enjoyment. The Decision notes that the landlord's testimony included that the tenant has become more demanding and difficult to deal with and that the other tenants are fearful of this tenant. The Decision also notes that during the hearing "the parties were in a highly charged screaming match with each making allegations of liar to each other"; and

- A copy of a Dispute Resolution Decision issued August 30, 2012 cancelling a 1 Month Notice to End Tenancy for Cause and dismissing the tenant's monetary claim and request to have the landlord comply with the *Act*, regulation or tenancy agreement.

The tenant submits that he had had no problems living in the residential property up until June 2011 and then he started being harassed by some of the other tenants but that recently that is no longer occurring. The tenant submits that he believes that the landlord has issued this most recent notice as a result of the previous hearings and the issues the tenant is raising.

The landlord submitted in evidence a copy of a tenancy agreement signed by himself and his son on January 14, 2013 for a 1 year fixed term tenancy beginning on March 1, 2013, for this rental unit.

The landlord testified that his son has never lived away from home and has some learning disabilities. The landlord submits both of his sons have previously thought about moving into one of his father's rental units, and that this time his son is adamant about doing so. The landlord states his son wants to have live nearby his father and to be in one of his father's rental units to see how it goes living on his own.

The landlord testified that he chose the unit this tenant lives in because while there are three other units in the residential property one is a 3 bedroom unit; one is a 2 bedroom unit; and the other unit is a bachelor unit but the tenant has been there for 20 years and this tenant has been in his unit for only 7 years.

The tenant submits that he does not believe the landlord's son will move in and questions the landlord's good faith in issuing this notice.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse intend, in good faith, to occupy the rental unit.

Residential Tenancy Policy Guideline 2 states that a claim of good faith requires honesty of intention with no ulterior motives. The Guideline goes on to say that if the good faith intent of the landlord is called into question the landlord has the burden to establish that they intend to do what they have indicated in the Notice and they must also establish that they do not have another purpose that negates the honesty of the intent.

While I accept the landlord's son may intend to move into the rental unit, I find the landlord's testimony that his sons have pursued this possibility in the past and not followed through on it troublesome.

In particular, I find the timing of this latest desire to do so following two very recent disputes between the landlord and tenant including the landlord's previous attempt to end the tenancy for cause and the behaviour recorded in the December 4, 2013 decision of both parties must have influence the landlord's decision to end this tenancy.

As such, I find the landlord has failed to provide sufficient evidence that he does not have another motive or purpose for ending the tenancy.

### Conclusion

I grant the tenant's Application and cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property and find the tenancy remains in full force and effect.

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: February 04, 2013

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Residential Tenancy Branch