



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNL

### **Introduction**

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on April 17, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail on April 26, 2013. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling a two month Notice to End Tenancy dated April 17, 2013 and setting the end of tenancy for July 1, 2013?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The tenancy began on April 1, 2012 when the parties entered into a one year fixed term tenancy that was to become month to month after the expiry of the fixed term. The

tenancy agreement provided that the tenant(s) would pay rent of \$1200 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$600 at the start of the tenancy.

The representative of the landlord testified that the landlord is a Society which operates the Church. The rental unit is needed to house a priest employed by the landlord and his family. A younger priest, his wife and infant child live in the upstairs portion of the rental property. At the time the downstairs portion of the rental unit was rented to the tenants, the landlord did not need the rental unit to house their priests. Since that time a priest has retired and on February 1, 2013 a new priest was hired. The new priest is commuting from Burnaby. The representative of the landlord testified that they intend in good faith to house this newly hired priest, his wife and three children in the rental unit.

He further testified the priest has ongoing responsibilities at the Church and is called upon at all hours of the day or night. He is responsible to ensure the Church and property is kept clean and to supervise activities at the Church.

The tenants testified that they have not been able to find alternative accommodation and need to remain in the rental unit as it their day care is very close. Further, they submit that the use of the rental unit by a priest does not met the definitions and requirements under the Residential Tenancy Act.

#### Grounds for Termination

The grounds set out in the two month Notice to End Tenancy are as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.
- The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act defines close family member as follows:

Landlord's notice: cause

49 (1) In this section:

"close family member" means, in relation to an individual,

(a) the individual's father, mother, spouse or child, or

(b) the father, mother or child of that individual's spouse;

Analysis:

After carefully considering all of the evidence and the submission of both parties I determined that the landlord has failed to establish that the use of the rental unit to house a priest is not covered under this provision of the Residential Tenancy Act for the following reasons:

- The landlord is a Society and is not an individual.
- A priest employed by the landlord is not a close family member (father, mother or child) of the landlord as defined by the Residential Tenancy Act.

As a result I determined the landlord has failed to establish sufficient grounds to end the tenancy on the basis that the rental unit is needed for occupation by a close family member.

The landlord also relies on section 49(6) which provides as follows:

49(6) A landlord 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 do any of the following:

...  
(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

The rental unit was recently renovated prior to the tenants taking possession. While there is work which the landlord wishes to do on the rental unit it cannot be considered to amount to a conversion. Further, the landlord intends to house a priest which will

more easily allow the priest to carry out his parish duties. In my view it is not the intention of the landlord to allow for the use of the rental unit by a caretaker, manager or superintendent. Further, even if the newly hired priest is seen as conducting caretaking and management duties, it cannot be said that the rental unit is necessary to be converted for use for this purpose.

I accept the testimony of the landlord that at all material time the landlord was and is acting in good faith. The representative of the landlord acknowledged that it hard to find an appropriate box on the Notice to End Tenancy. However, while one can sympathize with the landlord's plight, in my view the landlord has failed to establish sufficient grounds to end the tenancy based on the Notice to End Tenancy the landlord served on the Tenants. An arbitrator is obliged to follow the provisions of the Residential Tenancy Act and the Act does not permit the landlord to end the tenancy in this situation.

#### Determination and Orders

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. **As a result I ordered that the 2 month Notice to End Tenancy dated April 17, 2013 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I further order that landlord pay to the tenants the sum of \$50 for the cost of the filing fee such sum may be deducted from future rent.**

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 23, 2013

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Residential Tenancy Branch