



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, OLC, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy and an order to have the landlords comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the female tenant and one of the landlords.

Prior to the hearing the tenants submitted a letter to the Residential Tenancy Branch (RTB) dated May 29, 2013 requesting a re-scheduling of this hearing to a date after June 28, 2013. Their letter indicated that the landlords had agreed to send a similar request in writing. No such request was received by the RTB.

RTB Rules of Procedure #6.1 outlines the requirements for consideration of rescheduling a hearing. The Rule stipulates that written consent from both parties must be received by the RTB no later than 3 days prior to the hearing. As the RTB received no such request from the landlords the hearing was not rescheduled.

At the outset of the hearing the tenant explained the reasons for the request for re-scheduling was that the male tenant is not available until June 28, 2013 to participate. The female tenant however felt she could represent their issues and with her agreement the hearing proceeded.

During the hearing the other named respondent was called to see if he would be able to provide testimony regarding discussions he may have had with the tenants. The respondent was not available and therefore provided no direct testimony.

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

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; an order to have the landlord

comply with the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Act*.

### Background and Evidence

The parties agree the tenancy began on April 1, 2002 as a month to month tenancy for the current monthly rent of \$500.00 due on the 1<sup>st</sup> of each month.

The tenants provided into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated May 15, 2013 with an effective date of July 31, 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.

The landlord testified that he and his brothers had inherited the property from their mother approximately three years ago and have had the property for sale since that time. The family, however, has decided that they would still like to sell the property but that until they do they would like to use it as a vacation spot for all the members of the extended family of approximately 30 people.

The tenant testified that the landlord who did not attend the hearing had advised them that the landlords were ending the tenancy because they wanted to improve the chances of selling the property and they felt this would happen if the unit was vacant. The landlord in the hearing could not comment on the possible discussions of the other the landlord with the tenants.

The tenant also testified that while the landlords had been selling the adjacent property, which had a nicer home on the property than the cottage they reside in the landlords seldom if ever came offer and stayed in that house with the exception of the landlord who did not attend the hearing, who had stay a couple of times.

### 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 intends, in good faith, 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.

Residential Tenancy Policy Guideline #2 states that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. The landlord must honestly intend to use the rental unit for the stated purpose.

If evidence shows that in addition to using the rental unit for the stated purpose on the Notice, the landlord had another purpose or motive, then the evidence raises the question of the landlord having an ulterior motive. If the good faith requirement is called into question the burden rests with the landlord to establish they truly intend to do what they said on the Notice or demonstrate they have no ulterior motive.

From the testimony of the landlord I find the overall intention of the owners is to sell the property. I accept that they *might* intend to use it as a family vacation home. However, as the landlord has provided only uncorroborated testimony regarding the family's intended use and in light of the tenant's undisputed testimony that the other named landlord has indicated the intention is to enhance the saleability of the property, I find, on the balance of probabilities, that there is an underlying motive that is different than the stated purpose on the Notice. As such, I find the landlord cannot rely upon the purpose stated in the Notice to end the tenancy.

### Conclusion

For the reasons noted above, I cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on May 15, 2013. I order the tenancy will remain in full force and effective until such time as it is ended in accordance with the *Act*.

As the tenants were successful in their Application I find they are entitled to monetary compensation pursuant to Section 67 in the amount of the \$50.00 fee paid by the tenants for this application. I order the tenants may deduct this amount from a future rent payment in accordance with Section 72(2)(a).

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: June 14, 2013

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Residential Tenancy Branch

