



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC

### Introduction

This is an application to cancel a Notice to End Tenancy that was given for landlord use, and an application for an order for the landlord to comply with the tenancy agreement.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

The issue is whether to cancel or uphold a Notice to End Tenancy that has been given for landlord use.

The applicant also requested that I issue orders for the landlord to produce certain documents and I deal with that in my decision below.

### Background and Evidence

The landlord testified that:

- On May 15, 2013 she posted a two month Notice to End Tenancy on the tenant's door with the following box checked off *"the rental unit will be occupied by the landlord or the landlord spouse or a close family member(father, mother, or child) of the landlord or the landlord spouse"*
- The reason she has given the Notice to End Tenancy is because she intends to move into the rental unit with her daughter.
- She has never signed a tenancy agreement with the tenant, and therefore this is just a month-to-month tenancy and she has given the proper notice under a month-to-month tenancy.
- She inherited the house after her father was murdered by her mother, and she fully intends to move into the rental unit.
- She just wants to live peacefully with her daughter, in the house she inherited from her murdered father.
- She therefore requests that the Notice to End Tenancy be upheld and that an Order of Possession be issued.

The agent for the tenant testified that:

- She (the landlord's mother) was granted authority by the former executor of the estate to handle tenancy agreements at the rental property, and therefore she entered into a five year tenancy agreement with the applicant that runs until May 1, 2016.
- Her daughter, the respondent/landlord, was fully aware of the agreement and signed a letter on June 2, 2011 in which she states that she will honor the tenancy agreement's that were entered into on her behalf.
- Therefore it's her belief that her daughter is bound by the five year tenancy agreement, and cannot evict the tenant until the end of that term.

- Secondly she believes the Notice to End Tenancy has been given in bad faith, as this is the third notice given by that landlord to the tenant.
- The first Notice to End Tenancy was not given in the proper form, and was given for renovations to the property.
- The second Notice to End Tenancy was falsified and was given for landlord use; however the landlord never served the document on the tenant prior to a previous dispute resolution hearing.
- At that previous hearing the Arbitrator found that the tenant had backdated the Notice to End Tenancy.
- Her daughter is now making another attempt to end this tenancy and therefore they believe this notice has not been given in good faith.
- Thirdly Section 49 of the residential tenancy act states that the definition of landlord for "landlord use of property" is as follows:

**landlord"** means

(a) for the purposes of subsection (3), an individual who

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest, and

- Therefore since her daughter had only had the property for six months at the time of giving the Notice to End Tenancy, her reversionary interest does not exceed three years, and therefore she cannot give Notice to End Tenancy for landlord use.
- She therefore asks that the five year tenancy agreement be upheld, this Notice to End Tenancy be canceled, and that the tenancy continues

In response to her mother's testimony the landlord testified that:

- She did not sign the letter dated June 2, 2011, that letter she believes has been forged or at least altered to add her signature.
- Her mother did not have the authority to sign tenancy agreements, and she has provided an e-mail from the executor of the estate that states that he did not give her mother the authority to enter into tenancy agreements.
- Her Notice to End Tenancy has not been given in bad faith, the first notices were given for renovation, because the rental property is in poor repair and she wanted to renovate it as well as move into the rental unit.
- She always fully intended to move into the rental unit and that is still their intent, as she wants to live there with her daughter.

### Analysis

First of all it's my decision that I will not issue any order for the landlord to produce the documents requested by the tenants.

Two of the requests appear to just be fishing expeditions where the applicants have cast a wide net in hopes of finding some information that will support their case. I am not willing to issue such a broad Order for the production of documents.

The third and fourth requests are for documents are not even related to today's hearing, and have no bearing on the merits of today's application and therefore I am not going to issue an order for the production of those documents.

With regards to the alleged five-year tenancy agreement; it's my finding that the agent for the applicant has not met the burden of proving that she had the authority to enter into any kind of tenancy agreement with the applicant.

Further I accept the landlords claim that the June 2, 2011 letter was not written by her or has in some way been altered. I have compared the signatures on that document to signatures written by the landlord on other documents, and I find that there are significant differences in the signatures and I therefore am not convinced that the signature on the June 2, 2011 document is authentic.

Further the tenancy agreement itself appears to have been written as a defense argument to a Notice to End Tenancy given for renovations for landlord use, and I find it was most likely drafted after the original Notice to End Tenancy was given to the tenant.

I therefore I will not uphold the tenancy agreement as I do not believe that it is a valid agreement.

With regards to the claim that the Notice to End Tenancy has been given in bad faith, I accept the landlords claim that she fully intends to move into the rental unit and live there with her daughter and I do not accept that just because she had given a previous notice for renovations means that the notice has been given in bad faith.

Further, although the landlord's mother has argued that the Arbitrator in a previous hearing found that the landlord had falsified documents, that is not the case. The Arbitrator simply found that the landlord had not met the burden of proving proper service of the Notice to End Tenancy.

Thirdly with regards to the claim of reversionary interest; this is not a valid argument. The landlord in this case has full ownership of this rental property and this section does not mean that she has to live in the rental property for at least three years before she can give a Notice to End Tenancy. It simply means that she has the right to own the property for at least three years before it reverts back to someone else however; in this case, she has the right own the property for as long as she wishes, and ownership of the property does not revert back to anyone else.

I therefore it will not set aside that Notice to End Tenancy, and since the landlord has requested it, I will be issuing an Order of Possession.

### Conclusion

The tenant's application is dismissed without leave to reapply and I have issued an Order of Possession to the landlord for 1:00 PM on July 31, 2013.

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 24, 2013

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Residential Tenancy Branch