



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPL, CNL, FF

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to a notice to end tenancy for landlord's use of property and for a monetary order for the filing fee. The tenant applied to cancel the notice to end tenancy.

Both parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### **Issues to be Decided**

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to occupy the rental unit?

### **Background and Evidence**

The tenancy started in August 2012. The tenants occupy the basement of the home. The landlord lives upstairs. The landlords are a couple who are having marital problems and are in the process of getting divorced. The male landlord KK decided to move into the basement and therefore on May 25, 2013, he served the tenants with a notice to end tenancy for landlord's use of property. The notice is dated July 25, 2013 in error. The tenants agreed that they had received the notice around May 25, 2013 with an effective date of July 31, 2013.

The landlords are involved in a legal proceeding and the male landlord KK was temporarily ordered not to visit the marital home. KK stated that he has appealed this order and the matter will be heard shortly after this conference call. However KK agreed that at the time of this hearing he was not permitted to be present at the marital home.

### **Analysis**

The landlord served the notice to end tenancy for the purpose of moving into the rental unit. Even if I find that the landlord served the notice in good faith, I am unable to uphold the notice because at the time of the hearing, the landlord was under order not to enter the property and therefore would not be able to occupy the rental unit.

Accordingly, I find that the notice to end tenancy must be set aside and the tenancy will continue.

Since the notice is set aside, the landlord must bear the cost of filing this application.

### **Conclusion**

The landlord's application is dismissed. The notice to end tenancy is set aside and the tenancy will continue.

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: July 09, 2013

---

Residential Tenancy Branch

