



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 583230 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

CNL, MNDC, OLC, FF, MT

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated July 28, 2013, and purporting to be effective September 30, 2013, an order requiring the landlord to comply with the Act and a monetary order for damages.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

The tenant also requested an extension of time in which to dispute the Two Month Notice to End Tenancy for Landlord's Use. However, at the outset of the hearing, it was established that the tenant did not require this extension as she had made the application seeking to cancel the Notice within the statutory deadline under the Act.

### **Preliminary Matters (2)**

#### **Respondent's Evidence**

The landlord raised an issue with respect to the date that they received the tenant's evidence. According to the landlord the evidence was not received in sufficient time prior to the hearing to allow the landlord to respond.

The tenant's application was made on August 14, 2013 and evidence was mailed to the landlord on September 12, 2013. Although section 90 of the Act deems that mail is received five days after it was sent, according to the landlord, this evidence was not received until September 20, 2013, 8 days after it was mailed.

The landlord submitted a response to the evidence dated September 21, 2013, faxed to Residential Tenancy Branch on the same day, which was 3 days prior to the hearing. Under the Residential Tenancy Rules of Procedure, this evidence must be served on the other party, at least two days prior to the hearing. The “*Definitions*” portion of the Rules of Procedure states that when the number of days is qualified by the term “*at least*” then the first and last days must be excluded, and if served on a business, it must be served on the previous business day. Weekends or holidays are excluded in the calculation of days for evidence being served on the Residential Tenancy Branch.

I find that, under the Act, the tenant did serve the landlord with the evidence in accordance with the deadlines under the Act. I find that the landlord’s evidence was served beyond the deadline permitted under the Act.

However, I find no reason not to accept the landlord’s evidence. The reason for this determination is because, despite being received beyond the deadline permitted under the Residential Tenancy Rules of Procedure, the evidence in question only consists of written testimony from the landlord in response to the tenant’s allegations. I find that accepting and considering this will not prejudice the other party as the same evidence could be given verbally at the hearing in any case. I also must point out that, the fact it is a *written* statement, as opposed to verbal testimony, does not give it any additional evidentiary weight than a statement taken during the proceedings.

Accordingly, I accept the landlord’s evidence dated September 21, 2013, and will consider it.

#### Tenant’s Monetary Claim and Request for Repairs

In addition to the issue of the Two Month Notice to End Tenancy for Landlord’s Use, the tenant is seeking an order to force the landlord to comply with the Act, the tenant’s application also monetary compensation for damages and loss for an interruption of mail service and for loss of quiet enjoyment due to harassment.

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I find that the tenant’s application seeks to resolve other complex and chronic issues with respect to the landlord’s conduct, that are not part of the

matter related to the landlord's Two Month Notice to End Tenancy for Landlord's Use.

I also find that the tenant's monetary claim pertains to a separate and distinct section of the Act and is not related to the issue of whether or not the Two Month Notice to End Tenancy for Landlord's Use should be cancelled.

Accordingly, I find that the request for the landlord to comply with the Act and the monetary portion of this application should be severed and the matter must be dealt with through a separate application under section 67 of the Act. Therefore the tenant's request for a monetary order is dismissed **with leave to reapply**.

The hearing will proceed with respect to the tenant's request to cancel the Two Month Notice to End Tenancy for Landlord's Use.

### **Issue(s) to be Decided**

Should the Two-Month Notice to End Tenancy for Landlord's Use be cancelled?

### **Background and Evidence**

The tenant testified that she received a Two Month Notice to End Tenancy for Landlord's Use based on the landlord's intention to have a close family member occupy the unit and submitted a copy into evidence dated July 28, 2013. The landlord had indicated on the form that the reason for the Two Month Notice was because, "*The rental unit will be occupied by the landlord or the landlord's spouse or a close family member... ..*".

The tenant raised the issue of bad faith and testified that this is the landlord's latest attempt of several in the past, to evict the tenant. The tenant testified that none of these had been successful. The tenant testified that the landlord has established a long history of underhanded tactics to terminate the tenant's tenancy or to drive the tenant to give her notice to end tenancy.

The tenant testified that she is of the opinion that the 2-Month Notice was issued in reprisal for past disputes between the tenant and landlord. According to the tenant, most of the disputes dealt with the landlord's failure to maintain and repair the building.. The tenant pointed out that the landlord has had numerous hearings and orders issued by Residential Tenancy Branch for repairs that were ignored. The tenant testified that the landlord's refusal to comply with past orders for repairs have resulted in possible penalties under the Act.

The tenant testified that the landlord's repeated unsuccessful attempts to terminate their tenancy is a form of harassment.

The tenant questioned the landlord's stated intention to have a close family member occupy their suite. The tenant pointed out that there are 12 suites in the building. Moreover, according to the tenant, it has been proven through past dispute resolution hearings, that these premises are not being properly maintained and are in dire need of repair. The tenant testified that the landlord has done little to improve this state, despite legal orders, and the tenant questions why the landlord would ever want to house their close family member under such conditions.

The landlord testified that the building is in good repair and all orders have been complied with. The landlord testified that his son needs a place to live and it would be good to have a relative on site to report problems to the landlord.

The landlord stated that the landlord's son needs to occupy this particular rental unit, and not one of the other units in the same building, because this is the most suitable unit of all of the numerous rental units in the building. According to the landlord, this suite is the most private and contains a dishwasher and in-suite laundry facilities that the other rental units do not feature.

### **Analysis**

#### **Two Month Notice to End Tenancy for Landlord's Use**

Section 49(5) provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in **good faith** to occupy the rental unit. (my emphasis).

However the tenant has raised issues questioning the landlord's good faith intentions and indicated that the landlord has an ulterior motive for issuing the Two-Month Notice to End Tenancy.

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant or use this section to resolve problems with the tenancy, then the landlord does not have a "good faith" intent.

The burden is on the landlord to establish the landlord's good faith intent. However, I find that the landlord's testimony primarily focused on problems that they have encountered with the unit, the tenant and the tenancy and how they had effectively dealt with these issues..

According to evidence submitted by the landlord, there have been numerous dispute resolution hearings in the past and the tenant was awarded a rent abatement which is still in effect.

In fact, records indicate that there have been 9 previous hearings between these parties in the past 2 years. I find that, the most recent hearing was held on March 15 and March 27, 2013. The decision from that hearing contained the following statement by the arbitrator,

*“The landlord’s agents stated that there are 96 tenants in the rental property and that they have no problems with any other occupants, only the Tenants”.*

The landlord was not successful in that hearing, in which they were attempting to terminate this tenancy for unpaid rent.

In the dispute now before me, the landlord submitted evidence confirming that the rental unit was treated for a pest infestation in June 2013, there was a complaint about a water stain on the ceiling in June 2013, there are still allegations about missing mail delivery in June 2013 and repeated intercom failures have been occurring.

In making my determination about whether or not the landlord's Two Month Notice to End Tenancy for Landlord's Use was issued in bad faith, I take note of the following:

- The extensive history of disputes that include persistent attempts by the landlord to end the tenancy,
- The fact that there is a current rent abatement now in effect, based on the landlord's failure to complete repairs that were ordered in the past,
- The landlord's most recent unsuccessful attempt to terminate the tenancy that failed in March 2013, in which the landlord admitted that this is the only tenant causing problems,
- Conflicts, complaints and repair issues between the two parties that were still ongoing in June 2013,
- The tenant's allegation of harassment, and
- The proximity in which the landlord had evidently decided that this particular unit is needed to house a family member, to the previous hearing decision and tenancy-related problems in June 2013.

I find, on a balance of probabilities, it is likely that the above factors fact played some part in influencing the landlords in their decision to issue the Two Month Notice to End Tenancy for Landlord's Use.

Accordingly I find that the landlord has not succeeded in verifying their good faith intent and therefore I find that the Two Month Notice to End Tenancy for Landlord's Use dated July 28, 2013, must be cancelled.

I hereby cancel the Two Month Notice to End Tenancy for Landlord's Use and find it of no force or effect.

The remainder of the tenant's application, including the monetary claim and request for an order to compel the landlord to comply with the Act, is severed from the application and dismissed with leave. No findings have been made with respect to this portion of the tenant's application.

The tenant is entitled to be reimbursed for the cost of the application and is ordered to deduct \$50.00 from the next rent payment owed to the landlord.

### **Conclusion**

The tenant is partly successful in the application and the Two Month Notice to End Tenancy for Landlord's Use is cancelled. The tenant is granted an order ordering the landlord to comply with the Act.

The remainder of the tenant's application was severed and dismissed with leave to reapply.

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: October11, 2013

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Residential Tenancy Branch

