



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

LANDLORD: OPL, FF  
TENANT: CNL, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy and to recover the filing fee.

Both parties acknowledged receiving the others review hearing packages and evidence packages as required by the Act.

This is the fourth hearing in which the parties have been involved with regard to this tenancy. All the hearings have dealt with a Notice to End Tenancy and a request to cancel that Notice to End Tenancy. The first hearing on December 4, 2012, the Notice to End Tenancy was cancelled because the Notice was not completed correctly. In the second Hearing dated June 12, 2013, the Notice was cancelled because the Landlord did not establish grounds that the upper rental unit had to be vacated due to renovation to the rental unit in the lower part of the rental complex. The third Hearing of September 5, 2013, the Landlord was granted an Order of Possession for October 31, 2013 based on a close family member (the Landlord's son) moving into the rental unit.

Following that decision and Order dated September 5, 2013 the Tenants filed a review consideration application dated September 13, 2013 based on information that the Landlords intended to sell the property and a close family member was not moving into the rental unit. The Tenants submitted an advertisement that they said showed the property was for sale. The Tenants were successful in being awarded a Review Hearing scheduled for November 5, 2013.

As a preliminary matter Legal Counsel for the Landlords said that he is registering a formal objection to the review consideration hearing process because his clients did not have an opportunity to defend themselves so the process contravenes the principles of Natural Justice. As well the Landlords' Legal Counsel said the evidence that the review hearing was based on does not prove the grounds for the review hearing. The evidence submitted to the review consideration hearing has a description of the Landlord's house on a Vancouver real estate web site, but it does not prove the property is for sale. The Landlords' Legal Counsel said the Landlords did not approve the photograph for the web site and did not hire the website owner to post the house on the web site. For these reasons the Landlords' Legal Counsel said the Tenants' review application should be dismissed and the original Order of September 5, 2013 should be reinstated.

The Tenants' Legal Counsel said the Tenants did provide grounds for the review as they believe the rental unit was for sale on the website and this meant that the Landlord's son was not moving into the rental unit as indicated on the 2 Month Notice to End Tenancy dated July 13, 2013. Consequently the Tenants' Legal Counsel said there were grounds for the review Hearing.

The Arbitrator said a previous decision by another Arbitrator cannot be overturned by an Arbitrator; therefore the Review Hearing will proceed as schedule with the objections noted.

Further it was discovered at the start of the conference call that the Arbitrator did not have some of the evidence submitted by the Landlords. The Tenants confirmed they had the Landlords' full evidence package. The evidence missing from the Arbitrator's package was sent on October 21, 2013 and received by the Branch on October 22, 2013. The Arbitrator had an evidence package with those dates on it but the evidence package was not complete according to the Landlords. It was determined the missing evidence was in support of the second reason on the Notice to End Tenancy which is that the Landlords have the required permits to carry out renovations that require the Tenants to vacate the property. The Arbitrator indicated this part of the application was dismissed in the previous hearing for lack of evidence and since the review consideration application was based on the reason that the Landlord's close family member was moving into the rental unit the Arbitrator made the decision to continue the hearing with the focus of the Notice to End Tenancy being only the reason of a close family member moving into the rental unit. It was explained to the parties that the Landlords only have to prove one reason on the Notice to End Tenancy. The Hearing commenced with the focus of the Notice to End Tenancy and the Hearing being the Landlord using the property for a close family member.

The Tenants' Legal Counsel requested that the hearing be adjourned because the Arbitrator was missing some of the Landlords evidence. The Arbitrator denied the request for an adjournment as there was sufficient evidence to proceed.

The Landlords' Legal Counsel agreed to continue the Hearing based on the reason of a close family member of the Landlord is moving into the rental unit.

### Issues to be Decided

Landlord:

1. Are the Landlords entitled to End the Tenancy and receive an Order of Possession?

Tenant:

1. Are the Tenants entitled to an Order to Cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on December 15 as a month to month tenancy. Rent is \$1,200.00 per month payable on the 15<sup>th</sup> day of the month. The Landlord said the Tenant has paid the rent up to November 15, 2013. The Tenant paid a security deposit of \$600.00 in advance of the Tenancy.

The Tenants' Legal Counsel said the Landlords' Statutory Declarations about the facts of the case are not completed as required by the Law and the signatures look like they have been forged on one document. Consequently the Tenants' Legal Counsel said this evidence should be disallowed. Further the Tenants' Legal Counsel said the Landlord's action since the first application in December 2012 shows the Landlords are only interested in evicting the Tenants for any reason that will work. The Tenants' Legal Counsel said this shows the Landlords are not acting in good faith. As a result the Tenants' Legal Counsel said the Notice to End Tenancy should be cancelled and the tenancy should continue as agreed to in the tenancy agreement.

The male Tenant said the Landlord spoke to him about getting a realtor and an appraiser to look at the property so that he could sell it. The Tenant agreed that the Landlord could enter the rental unit for those purposes. The Tenant said he did not know if the Landlord had contacted a realtor or an appraiser or if the Landlord brought these people into the rental unit. The Tenant said he thinks that the Landlord is going to sell the rental unit when he is able to.

The female Tenant said she googled the address of the rental property on the internet and discovered a real estate web site that had the rental property posted on it. The female Tenant said it does not say the property is for sale, but it is a real estate web site so she assumed the property was for sale.

The Landlords' Legal Counsel said all the Statutory Declaration are done in compliance with normal legal practices and the signature on one document is not his but the male Landlord's. This was a mistake in signing but the Statutory Declaration is by the Landlord and is signed by the Landlord. As well the Landlord's Legal Counsel said he was present for this declaration and for all the declarations submitted.

The Arbitrator asked the Landlord to give affirmed testimony that his Statutory Declarations are true. The Landlord said his Statutory Declarations dated October 21, 2103, again on October 21, 2013 and October 30, 2013 are all true. Further the Landlord gave affirmed testimony that the rental property is not for sale, he is not selling it and he has not hired a realtor or appraiser.

The Landlord further testified that he is renovating the rental property so that his son can move into the upper part of the house to live there and to manage the tenants in the lower suite. The Landlord said the renovations are estimated to take 3 to 4 months and then his son will move in to the upper part of the rental unit.

The Landlords' Legal Counsel continued to say that the real estate web site owner agreed to a Statutory Declaration which is included in the Landlords' evidence package and it indicate he has had no dealings with the Landlords and he does not have the rental property listed for sale. The declaration says his web site is a data base of properties in Vancouver that are collected with and without the consent of the owners. Some of the properties on the web site are for sale and other are not.

The Landlords' Legal Counsel closed his comments by saying the Landlords' son moving into the rental property is a legitimate reason to issue a 2 Month Notice to End a Tenancy for the Landlord's Use of the Property. As a result the Landlords' Legal Counsel request that the original Order of Possession be reinstated. As well the Landlords' Legal Counsel said the Tenants have not submitted any proof to contradict the reason on the 2 Month Notice to End Tenancy for the Landlord's Use of the Property for a close family member.

The Tenants' Legal Counsel said in closing that the Landlords' previous behaviour shows that they want to evict the Tenants for their own personal gain. They believe the Landlords are selling the property and that the Landlords' son has no intension of moving in to the upper unit. In addition the Tenants Legal Counsel said the Tenants have health issue that would make a move very difficult for them. For these reason the Tenants believe the Notice to End Tenancy should be cancelled.

At the end of the Hearing the Arbitrator said that if the reason on a 2 Month Notice to End Tenancy is not carried through with and if a tenancy ends then there can be financial consequences for the Landlord.

Further the Arbitrator gave the parties an opportunity to make a mediated settlement agreement, but the parties were unable to agree to a settlement. As a result the Arbitrator took the dispute to a decision to resolve it.

Analysis

Section 49(3) of the Act says 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.

Further;

**"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;

The Tenants have been successful in being awarded a review hearing on the grounds that they believed the property was listed for sale on a Vancouver real estate web site, which made them believe that the Landlords' son was not moving into the rental unit. On the surface of reviewing the posting or advertisement I understand and concur with the Tenants original reaction. This potential sale of the property created an opportunity for the Tenants to prove the Landlord was not moving his son into the rental unit, but was evicting them so that he could sell the property. The Tenants now have the burden of proving the Landlord is selling the property, the Landlords' son is not moving into the rental property and that the Landlords are acted in bad faith.

The Tenants and the Tenants Legal Counsel have not provided any corroborating evidence that the property is for sale or that that Landlords son is not moving in after the renovations are completed. The Tenants Legal Counsel said the Landlords' past behaviour illustrates that he is now acting in bad faith. It is true that the Landlords have tried a number of times to evict the Tenants, but this Hearing was focus on the reason that the Landlord is ending the tenancy for his son moving into the rental unit. The male Landlord gave affirmed testimony and affirmed Statutory Declarations that the property is not for sale and that their son is moving into the upper part of the rental unit to manage the lower suite. The Tenants have not provided any evidence that contradicts the Landlords' reason to end the tenancy. Consequently I accept the Landlords evidence and testimony and I award the Landlords' a replacement Order of Possession with an effective vacancy date of November 15, 2013 as the Tenants have paid rent to this date and as the previous Order of Possession is stale dated now. The previous

Order dated for October 31, 2013 is canceled and is now replaced with the Order dated November 5, 2013.

Further I dismiss the Tenants application in full due to lack of evidence.

As the Landlord has been successful in this matter, I order the Landlord to recover their filing of \$50.00 from the Tenants by deducting \$50.00 from the Tenants' security deposit.

As the Tenants have been unsuccessful in this matter I order the Tenants to bear the cost of the filing fee of \$50.00 that they have already paid.

### Conclusion

An Order of Possession effective at 1:00 p.m. on November 15, 2013 has been issued to the Landlords. A copy of the Order must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia

The Tenants' application is dismissed without 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: November 05, 2013

---

Residential Tenancy Branch

