



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROADVIEW COURT HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, issued on November 29, 2013.

Both parties appeared, 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.

In a case where a tenant has applied to cancel a notice Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence and submission first, as the landlord has the burden of proving that the notice was issued for the reasons given on the Notice.

### Preliminary Matter

At the outset of the hearing, I reminded both parties that I was the arbitrator that heard the tenant's application on November 20, 2013, and that matter was adjourned due to lack of time and was rescheduled to continue on February 5, 2014.

Both parties were given the opportunity to address any concerns with me presiding over this hearing. Both parties confirmed that they had no concern with me hearing this new dispute.

### Issue to be Decided

Should the two month notice to end tenancy issued on November 29, 2013, be cancelled?

### Background and Evidence

The tenancy began approximately 31 years prior. Rent is the amount of \$874.76 is payable monthly.

The parties were at a dispute resolution hearing on March 11, 2013 and April 17, 2013, which granted the tenant a monetary order and the landlord was found to have failed to maintain and provided the unit in a reasonable state and the arbitrator made finding that the landlord must replace the carpets, cabinets and paint the walls in the rental unit.

On August 26, 2013, the tenant filed a subsequent application to seek further compensation and repairs. That matter was scheduled before me on November 20, 2013, and an agreement on repairs was made with set timelines; the matter was adjourned due to lack of time and was scheduled to continue on February 5, 2013. An interim decision was provided to the parties.

The advocate stated on November 29, 2013, the tenant received the interim decision dated November 20, 2013, by mail and on November 30, 2013, the tenant was served with a 2 Month Notice to End Tenancy. The advocate stated at that time the landlord's agent verbally told the tenant that "This should solve your problems".

The reason stated in the notice was,

- A family corporation owns the rental unit and will be occupied by an individual who owns, or whose close family members own, all the voting shares.

The advocate stated the tenant disputes the notice as they believe the notice was not issued in "good faith" and comes as a result of the dispute between the parties. The advocate stated that the motive for the eviction is dishonest and in retaliation against the tenant to ensure the balance of the repairs orders are not carried out, which is to replace the kitchen cupboards in February 2014.

The advocate stated there have been three vacancies in the same building in the last six months; the most recent vacancy was December 1, 2013. The advocate stated it would have been reasonable for the landlord to utilize this available vacancy, rather than to displace a tenant of 32 years.

The landlord's agent testified that the property has 21 suites, and one of those suites is occupied by another family member's already.

The landlord's agent testified the owner's daughter is moving back to [name removed] from [name removed] as her husband received a transfer with his place of employment.

The agent stated that the unit the tenant currently resides in, is located on the quiet side of the building and is perfect for the daughter as she is a nurse. The owner also feels that this suite is appropriate as they have spent a significant amount of money upgrading the apartment.

The landlord's agent acknowledged that they had a rental unit available for December 1, 2013, however, they did not feel that leaving a unit empty for two months and losing two month of revenue was appropriate.

The tenant argued that the rental unit that was available in December was directly located above his unit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

When a tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the landlord to prove the two part test as follows:

1. The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
2. The landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

The owners alleged their daughter is moving from [name removed] to [name removed]. A statement of disclosure was filed as evidence, however, the statement is not signed and therefore I can give little weight to an unsigned typed document. Further, the statement claims that they have made the necessary arrangements to move, however, there is no verification, such a contract with a moving company for me to consider. Therefore, I find the landlord has failed to prove part 1 of the test.

The tenant has rented the premises in excess of 31 years. The parties were at a dispute resolution hearing on March 11, 2013 and April 17, 2013, which granted the tenant a monetary order and the landlord was found to have failed to maintain and provide the unit in a reasonable state and the arbitrator made finding that the landlord must replace the carpets, cabinets and paint the walls in the rental unit.

While I accept the landlord has replaced the carpets and has painted the unit, the landlord has not replaced the kitchen cabinets. On November 20, 2013, the landlord agreed to replace the cabinets by February 28, 2014. However, shortly after that interim decision was received by the parties, the landlord issued the notice to end tenancy, with an effective vacancy date of January 31, 2013.

I find that on the balance of probability that the motive for seeking to have the tenant vacate the rental unit was likely to avoid the significant cost to replace the kitchen cabinets and therefore not issued in good faith. Therefore, I find the landlord has failed part 2 of the test.

In light of the above, the tenant's application to cancel the 2 Month Notice to End Tenancy Issued on November 29, 2013, is granted the notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

### Conclusion

The tenant's application to cancel the 2 Month Notice to End Tenancy Issued on November 29, 2013, is granted. The tenancy will continue until legally ended in accordance with the Act.

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: February 07, 2014

---

Residential Tenancy Branch

