



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, RP, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on January 22, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on January 23, 2014. With respect to each of the applicant's claims I find as follows

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling a 2 month Notice to End Tenancy dated January 22, 2014?
- b. Whether the tenant is entitled to an order for emergency repairs?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began in September 2002. The present rent is \$460 per month payable in advance on the first day of the month. The tenant paid a security deposit of \$175 at the start of the tenancy.

The landlord owns a number of rental properties in the area. The landlord testified the rental property is a rooming house which contains 6 rooms. The tenant testified there is a seventh room in the rental property that was previously occupied but has not been re-rented since September 2013.

The landlord testified the rental unit is need for the purpose of installing a resident manager. He further testified this room is the largest and most appropriate housing a manager. A manager is necessary as there are a number of maintenance issues in the rental property that needs a managerial presence..

The tenant submits the landlord is not acting in good faith based on the following:

- The tenant testified that she has been a spokesperson for the residents in the rental property demanding that the landlord make necessary repairs. The landlord has been slow in making the repairs and the tenant believes the landlord's actions are retaliatory.
- On November 1, 2013 the landlord served a 2 month Notice to End Tenancy on all of the residents in the rental property alleging the rental property was necessary to house a caretaker who was going to look after all of the landlord's property in the area. On December 30, 2013 the arbitrator rendered a decision cancelling the 2 month notice for a number of reasons including a determination that section 49(6)(e) applied to house a manager for the rental property only and not rental properties in the vicinity.
- There is currently a room in the rental property which could house a manager and that room has been vacant since September 2013.
- Witness #1 testified she lived in one of the rental properties owned by the landlord in the vicinity. She vacated her rental unit in May, 2012 after receiving a

two month notice from this landlord. That rental unit has remained vacant for over one and half years. The tenant testified the landlord offered to rent this rental unit to her at an increased rent.

- In the last 10 years since the tenant has resided in the rental property there has never been more than one caretaker collectively for the four properties owned by the landlord and located in the immediate vicinity.
- The tenants in all of the four properties have been given a notice by the landlord directing them to make rent payments and maintenance call to SH who is the building manager of another building. The tenant gave evidence that the rental unit in which SH is living was recently renovated.

The landlord disputed the tenant's evidence of the 7<sup>th</sup> room in the rental property although he acknowledged there are rooms in these properties that are being used for storage.

### Analysis

The tenant testified the landlord has made the emergency repairs. As a result she stated that she wanted to withdraw her claim for emergency repairs. Accordingly I ordered that the claim for emergency repairs be dismissed as withdrawn.

The Notice to End Tenancy relies on section 49(6) of the Residential Tenancy Act. That section provides as follows:

#### **Landlord's notice: landlord's use of property**

**49** (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

Policy Guideline #2 provides as follows:

This policy guideline addresses demonstration of good faith when a landlord ends a tenancy for landlord's use of property.

## **LEGISLATIVE FRAMEWORK**

The *Residential Tenancy Act*<sup>1</sup> and the *Manufactured Home Park Tenancy Act*<sup>2</sup> allow a landlord to end a tenancy if the landlord intends in good faith to:

- provide the rental unit to a new caretaker, manager or supervisor, when the employment of the tenant has ended;
- move in themselves, or allow a close family member to move into the unit;
- sell the unit and after all the conditions of sale are removed, the purchaser requests the seller issue the Notice to End Tenancy because they or a close family member intend to move in; or
- substantially renovate or demolish the rental unit, with all required permits and approvals, or convert it to another use, including a caretaker's unit, or convert it to a strata unit.

## **GOOD FAITH REQUIREMENT**

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

## Analysis

Section 49(6) and the Policy Guidelines provide that a landlord has the burden of proof to establish that they have a “good faith” intention to convert the rental unit for use by a caretaker. After carefully considering all of the evidence I determined the landlord has failed to establish this good faith intention for the following reasons:

- The landlord failed to provide a sufficient explanation as to why the practice of the last 10 years of having one building manager for the 4 buildings needed to be changed and why this rental property needed a building manager of its own.
- The landlord had previously used this as a basis for terminating the tenancy in another building and the landlord failed to install a building manager in that rental unit after the tenant vacated in accordance with the two month Notice to End Tenancy that was served on her.
- I accept the evidence of the tenant that there is a unit in the rental property that remains vacant. If the landlord intended to install a manager in this building the landlord could have used that rental unit. If that unit was not satisfactory the unit in the adjacent vacant is available.
- The tenant has been outspoken in speaking out for the concerns of all of the tenants in the rental property because of the failure to deal with needed repairs. The landlord’s response was to attempt to evict all tenants on the basis that a caretaker was going to move into the entire rental property. The argument by the landlord in that hearing was that this caretaker would deal with all of the 4 buildings. The landlord now takes a different position in this hearing by saying that it needs to install a caretaker in this building which is contrary to its practice of the last 10 years and contrary to the position it put forward in the previous hearing where it stated it needed the entire building for a caretaker that was going to look after all four buildings.

In summary I determined the landlord has failed to establish a good faith intention. I determined the landlord has an ulterior motive to terminate the tenancy of what they perceive is a troublesome tenant. The landlord’s conduct in terminating a tenancy for the same cause in another building has been brought into question as the landlord

failed to use the rental unit in that building as a caretakers unit. The landlord failed to provide sufficient cause why this rental unit is needed for a caretaker's unit.

As a result I ordered that the Notice to End Tenancy dated January 22, 2014 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. **As the tenant has been successful in her application I ordered that the landlord pay to the tenant the sum of \$50 for the cost of the filing fee in this application.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: March 13, 2014

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Residential Tenancy Branch

