



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for landlord's use.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

### Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

### Background and Evidence

The tenancy agreement signed by the parties on September 30, 2007 indicates the tenancy started September 30, 2007.

The landlord gave evidence that he served the tenant personally with a Notice to End Tenancy for Landlord's Use (the "Landlord's Use Notice") on April 28, 2014. The Landlord's Use Notice has an effective date of July 1, 2014 and specifies the following reasons:

- A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares
- The landlord has all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant

The tenant applied to dispute the Landlord's Use Notice on May 6, 2014.

The landlord submitted an evidence package that included a copy of a 1 Month Notice to End Tenancy for Cause (the "Cause Notice") dated March 1, 2014. The Cause Notice has an effective date of April 1, 2014 and specifies the following reasons:

- Tenant has caused extraordinary damage to the unit/site or property/park
- Tenant has not done required repairs of damage to the unit/site

The landlord gave evidence that he served the Cause Notice on the tenant personally on March 1, 2014. The tenant did not apply to dispute the Cause Notice.

The tenant gave evidence that the landlord cancelled the Cause Notice. She said that when the landlord served the Cause Notice, he was concerned about damage to some of the doors in the rental unit (and not other damage he raised in his evidence). The tenant says the landlord sent one of his contractors over to give the tenants an estimate for repairing the doors, and gave the tenants a choice of hiring the contractor or installing new doors themselves. The tenants opted to install the new doors themselves, but it proved difficult to hang the doors because the walls are not properly aligned.

The tenant gave evidence that the landlord inspected the new doors on May 1, 2014 and said it was OK. The landlord then accepted rent for May 1, 2014. The tenant's position is that the landlord would not have taken the May rent or served the Landlord's Use Notice unless he had cancelled the Cause Notice.

The landlord's evidence is that he did not cancel the Cause Notice. His evidence is that he was unhappy with the repairs made by the tenants and they were incomplete. Asked why he did not seek an order of possession on the basis of the Cause Notice, the landlord gave evidence that it was "not in my heart to kick them out". For that reason, he said he gave the tenants more time to move out. Asked how he gave the tenants more time, the landlord cited the Landlord's Use Notice.

At this point in the hearing, I asked the parties for their evidence regarding the Landlord's Use Notice. The landlord gave evidence that the rental property is not, in fact, owned by a family corporation. It is owned by the landlord and his wife in their own names.

Asked what his intention was for the rental unit, the landlord said he wished to repair the rental unit to bring it to a livable state. The landlord provided documentary and oral evidence regarding various damage that he asserts was caused by the tenants.

Asked why the rental unit had to be vacant for these repairs, the landlord provided more evidence regarding various damage he says was done by the tenants.

The landlord gave evidence that he wishes to honour the terms of the Landlord's Use Notice, even if I find the Cause Notice was effective in ending the tenancy. He requests an Order of Possession effective July 1, 2014 and will allow the tenants to pay no rent for second month of the Landlord's Use Notice (June 2014).

### Analysis

The parties differed in their evidence about whether the landlord cancelled the Cause Notice. I find that the landlord did not cancel the Cause Notice for the reasons below.

The landlord's oral and documentary evidence convinced me that the landlord is very troubled by the damage he says was caused by the tenants. Both the landlord's evidence itself and the landlord's manner in giving evidence are more consistent with the landlord's assertion that he did not cancel the Cause Notice than with the tenant's assertion that he did cancel it.

I accept the landlord's evidence that he felt bad about ending the tenancy, and wished to provide the tenants with more time to find a new place to live. I accept that his wish to give the tenants "an extension" was his motivation for serving the Landlord's Use Notice.

According to Section 47(5), if a tenant does not make application for dispute resolution within 10 days of receiving a notice to end tenancy for cause, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

I find that, since the Cause Notice was not cancelled by the landlord and since the tenant did not apply to dispute the Cause Notice, the Cause Notice was effective in ending the tenancy. Since the Cause Notice was effective in ending the tenancy, I do not need to consider the tenant's application to cancel the Landlord's Use Notice. The tenant's application is therefore dismissed.

The landlord is entitled to an order of possession. The effective date on the Cause Notice is not consistent with Section 47(2), and so the effective date is deemed to be April 30, 2014 by the operation of Section 53. However, the landlord has agreed to extend the effective date farther, until July 1, 2014.

I grant the landlord an order of possession effective July 1, 2014 which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

Conclusion

The tenant's application is dismissed. I grant the landlord an order of possession effective at 1 p.m. on July 1, 2014.

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: June 05, 2014

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Residential Tenancy Branch

