



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for landlord's use of property.

The tenant and an agent for the landlords attended the hearing and each gave affirmed testimony. The parties also provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Was the 2 Month Notice to End Tenancy for Landlord's Use of Property issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

The landlords' agent testified that this month-to-month tenancy began on July 1, 2003 and the tenant still resides in the rental unit. Rent in the amount of \$1,750.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. On June 12, 2003 the landlords collected a security deposit from the tenant in the amount of \$875.00 which is still held in trust by the landlords.

The landlord's agent further testified that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property on May 20, 2014 by registered mail. Neither party has provided a copy, however the landlords' agent testified that it is dated May 20, 2014 and contains an expected date of vacancy of July 31, 2014. The reason

for issuing the notice states: "All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The landlords' agent further testified that the landlords have sold the rental unit and the purchaser has signed a request stating that the purchaser intends in good faith to occupy the rental unit and requests the landlords to provide vacant possession. A copy of that notice has been provided and it is signed by a Buyer and dated July 12, 2014. The form letter has a space for a witness to sign, however that space is blank. A copy of the Contract of Purchase and Sale has also been provided which is dated May 17, 2014. The possession date is September 25, 2014, and the landlord's agent testified that all conditions upon which the sale depends have been satisfied. After the issuance of the notice, however, another condition was added to increase the amount of the deposit but that condition has also been satisfied.

The tenant testified that the purchaser never looked at the rental unit, just the property. He also testified that the buyer didn't sign the notice requesting vacant possession until July 12, 2014 and the tenant believes the landlords have manufactured a method to get rid of the tenant.

The tenant also pointed out a clause in the Addendum to the Contract of Purchase and Sale which states: "Buyer has the right to assign the title to third party upon completion without further notice to the seller. Said assignment not to relieve the buyer from his/her obligation to complete the terms or conditions of this contract should the assignment default." That portion is in hand-writing and the balance of the Addendum is a printed form.

The tenant asks that the notice to end tenancy be cancelled because the purchaser does not have a good faith intention to move into the rental unit and the notice to end tenancy was issued before the purchaser made the request for vacant possession.

In rebuttal, the landlords' agent testified that the clause in the Addendum to the Contract of Purchase and Sale referring to assigning to a third party is a standard clause.

### Analysis

The *Residential Tenancy Act* states that a landlord can end a tenancy if the landlord has a written request by the purchaser and all conditions upon which the sale depends have been satisfied. That means that a landlord cannot issue a 2 Month Notice to End Tenancy for Landlord's Use of Property until the landlord has a written request by the purchaser. Also, the purchaser must have a good faith intention to use the rental unit for the purpose set out in the request and in the notice to end the tenancy. In this case, the landlords' agent testified that all conditions had been satisfied before the notice to end tenancy was issued, but the notice by the purchaser wasn't signed until almost 2 months after issuance of the notice. Therefore, I find that the notice has been issued contrary to the *Act*, and I hereby cancel it and the tenancy continues.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee, and I order that the tenant be permitted to reduce rent for a future month by that amount.

### Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on May 20, 2014 is hereby cancelled and the tenancy continues.

I hereby order that the tenant reduce a future month of rent by \$50.00 as recovery of the filing fee.

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: July 29, 2014

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Residential Tenancy Branch

