



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice") and for recovery of the filing fee paid for this application.

The listed parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, both parties confirmed receipt of the other's documentary evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Has the landlord provided sufficient evidence to support their Notice?

Is the tenant entitled to cancellation of the Notice?

### Background and Evidence

Although no written tenancy agreement was provided by either party, I heard undisputed testimony that this tenancy began on June 15, 2011, that monthly rent is \$700, and that the tenant paid a security deposit of \$350.

The tenant's spouse, who claimed also to be a tenant, stated that monthly rent is payable in two installments of \$350 each month, and the landlord submitted that the monthly rent was due on the 15<sup>th</sup> day of the month.

The rental unit is in an upper suite of a duplex home owned by the landlord, who also rents the other three suites. The rental unit is a 3 bedroom suite, there is a lower suite on the tenant's side of the duplex and on the other side of the duplex, is an upper, 3 bedroom suite, and a lower suite. Other than the rental unit, the three other suites are rented by a couple in each.

Pursuant to the Dispute Resolution Rules of Procedure, the landlord proceeded first in the hearing to give evidence to support the 2 Month Notice to End Tenancy for Landlord's Use of Property issued to the tenant on June 10, 2014, by leaving it with the tenant, according to the landlord. The Notice listed a move-out date of August 15, 2014, and listed as reason that "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

*Landlord's evidence-*

The landlord submitted that their 27 year old son intended on moving into the rental unit as quickly as possible as he desired to live separately from his parents. The landlords' son signed a letter to this effect, but was not made available to testify at the hearing.

In addition to the letter signed by the son, submitted into evidence, the landlords also submitted a copy of a notice in letter form they issued to the tenants, dated May 15, 2014, which informed the tenants that they were terminating the tenancy agreement as of June 15, and that they must vacate. As reason stated in the letter, the landlords stated that lots of work was needed to be done and that they required the rental unit to renovate. Following the renovation, according to the letter, the landlords' son was to move into the rental unit.

*Tenant's response-*

The tenant submitted that there was no reason to evict them, as they had been living in the residential property longer than the three other sets of tenants, and they had a family of 7, as opposed to the other rental unit, which had a family of 2.

The tenants questioned the good faith of the landlord in issuing the Notice, as they contended that the landlord wanted a higher rent, due to the shortage of available rental properties in that area and the influx of service workers to the area.

The tenants contended that it would be much easier to evict a family of 2 rather than a family of 7.

*Landlord's further testimony-*

In response to my question, the landlord said that their son chose these tenants' side of the duplex as he "likes" it better.

When questioned further as to why they would not choose to evict a family of 2, the female landlord stated that the other couples are "nice," "never complain," "don't give her any problems," and "pay their rent on time". Additionally the landlord stated that the tenants broke a window.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The Notice in question was issued pursuant to section 49(3) of the Act which provides "a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or close family member of the landlord intends in good faith to occupy the rental unit".

According to Residential Tenancy Branch Policy Guideline, if evidence shows that the landlord's purpose in ending the tenancy is for a reason other than the one stated on the notice to end tenancy, then that evidence raises a question as to whether the landlord had a dishonest purpose. If the good faith intent of the landlord is called into question, as is the case here, the burden is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy.

In this case, I find that the evidence shows that the landlord did have an ulterior motive for ending the tenancy. In reaching this conclusion, I relied on the landlord's statements at the hearing that they were having issues with the tenants to show an underlying reason for issuing the Notice. I find the content and tone of the landlord's statements at the hearing showed clearly that they were using the Notice to evict the tenants for reasons other than listed on the Notice.

I also relied upon the letter of May 15, 2014, from the landlords to the tenants, which also stated that they intended to renovate the rental unit, which I find lends credibility to the tenants' submissions that the landlords desired to increase the monthly rent and further calls into question the landlord's true intention in issuing the Notice.

Due to the above, I accept the tenant's submission that the landlord does not intend in good faith to have his son live in the rental unit, but rather the landlord wishes to end the tenancy in order to re-rent the unit for a higher rent and to remove a tenant who allegedly causes the landlord problems.

As a result, I find the landlord's 2 Month Notice to End Tenancy for Landlord's Use, dated June 7, 2014, is not valid, not issued in good faith, and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

As the tenants were successful with their application, I grant the tenants recovery of their filing fee of \$50, and I direct them to retain this amount from their next, or a future month's rent payment in satisfaction of this monetary award. The tenants should advise the landlord when this deduction is being made.

### Conclusion

I grant the tenant's application seeking cancellation of the landlord's 2 Month Notice, and the Notice is hereby cancelled with the effect that the tenancy will continue until 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: July 24, 2014

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Residential Tenancy Branch

