



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNL, CNR, MNR, MNDC, RR

### Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenants have applied to cancel a 2 month Notice to end tenancy for landlord's use of the property and a 10 day Notice to end tenancy for unpaid rent, both issued on July 4, 2014; compensation for the cost of emergency repairs and damage or loss under the Act and an Order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matters

The tenants indicated several matters of dispute on their application and confirmed that the main issue to deal with during this proceeding were the Notices to end tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to cancel the 2 Notices ending tenancy.

The tenant's have leave to reapply in relation to the balance of the matters indicated on their application.

There was no evidence before me that the tenants have made expenditures for emergency repairs.

The landlord confirmed receipt of the tenants hearing package and evidence sent by registered mail in July 2014. The landlord made a written submission to the Residential Tenancy Branch on September 2, 2014; that evidence was not before the tenants or in my hand. As that submission was not served in accordance with the Rules of

Procedure, at least 5 days prior to the hearing, the landlord was at liberty to make oral submissions.

The landlord confirmed that the landlord's service address indicated on the application is correct.

### Issue(s) to be Decided

Should the 2 month Notice to end tenancy for landlord's use of property and the 10 day Notice to end Tenancy for unpaid rent both issued on July 4, 2014 be cancelled?

### Background and Evidence

This tenancy commenced in June 2009, with a previous property owner. Rent is \$1,200.00 per month, due on the 1<sup>st</sup> day of each month. The tenancy commenced as a fixed-term, ending June 30, 2013, at which time the tenancy continued as a month-to-month term.

The current property owner purchased the rental property at a point during the fixed-term.

The parties described a tenancy that has been fraught with difficulty. There have been a number of previous dispute resolution hearings. A check of the file numbers supplied in evidence show hearings between the parties as follows:

- September 2012 (file 794751) – 2 month Notice to end tenancy for landlord's use issued for occupancy prior to the end of the fixed term, Notice cancelled;
- June 2013 (file 249347) – tenants disputed a 2 month Notice to end tenancy for landlord's use of the property and 10 day Notice for unpaid rent; landlord failed to attend the hearing, the Notices were cancelled; and
- August 2013 (file 249036) – Landlord application requesting an Order of possession based on a 2 month Notice to end tenancy for landlord's use of the property, the landlord failed to attend in support of his application; tenants were present and the Notice was dismissed.

There was no dispute that on September 17, 2012 the tenants were issued a monetary Order by an arbitrator (*The Director*) in the sum of \$8,445.00, for repair, renovation and labour costs claimed. The tenants have been enforcing the Order through the Small Claims process and at present approximately \$3,600.00 remains owing by the landlord. The tenants stated that on a number of occasions they have obtained payment by paying rent owed to the Court and then obtaining an Order allowing payment of that rent back to the tenants, which is then applied as payment by the landlord.

The 10 day Notice ending tenancy for unpaid rent given to the tenants on July 4, 2014 and disputed on July 7, 2014 indicated that the Notice would be automatically cancelled if the landlord received \$1,200.00 within 5 days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within 5 days.

Extensive discussion took place during the hearing in relation to the process the tenants had used in obtaining an Order allowing them to apply the July 2014 rent owed to the landlord's debt. There was no dispute that the tenant's paid the Court \$1,200.00 on July 3, 2014. The tenants stated that on July 22, 2014 a hearing was held, during which time the Court determined that the July 3, 2014 deposit to the Court would be paid to the tenants and applied as a payment toward the landlord's debt.

The landlord stated they were aware of the July 22, 2014 hearing but chose not to attend as there is no dispute the tenants are owed that compensation. The landlord did dispute service of a July 3, 2014 garnishee Order and questioned the validity of the Order; in the absence of notification of the garnishee the tenant's say was issued and served to the landlord.

Copies of several Court documents were requested from the tenant; to be given to the Residential Tenancy Branch (RTB) and the landlord.

The 2 month Notice ending tenancy for landlord's use of the property indicated that the tenancy should end effective September 7, 2014. The one reason on the Notice was:

*The rental unit will be occupied by the landlord or the landlord's spouse or a close family member.*

The landlord said that he has always wanted to live in the unit so that repairs may be made. The landlord understands the property has been in disrepair; he wants to make it his home and complete renovation to the property. The property will become the landlord's permanent residence.

The landlord said the initial Notice issued in 2013 was given in the absence of his understanding he could not require the tenants to vacate during a fixed-term tenancy. Since February of this year the parties had been attempting to negotiate a possible purchase of the property by the tenants. Those negotiations failed.

The tenants said that the landlord has made multiple attempts to evict them and that the landlord has no intention of living in the rental unit as he owns a number of other properties.

The tenants supplied a copy of a March 1, 2014 note given to the landlord indicating that the home has a number of roof leaks, sewage system problems and a rat

infestation; the tenants requested repair. The tenants supplied photographs showing rats in traps and items requiring repair. The tenants allege the landlord has been aggressive and confrontational.

The tenants questioned whether the landlord is actually the owner of the property; as they have never been given any documents proving the sale to the current landlord.

The tenants point to the decision issued prior to June 2013, indicating the tenancy would continue; the landlord issued another 2 month Notice ending tenancy resulting in the August 2013 hearing, when the landlord did not appear in support of the Notice that had been issued. The tenants find the repeated issuing of Notices a form of harassment by the landlord.

### Analysis

When a tenant applies to cancel a Notice ending tenancy the landlord provides submissions first, as the landlord has the burden of proving the reasons on the Notice.

There was no dispute that the tenants are entitled to compensation as the result of a monetary Order issued on September 17, 2012, by an arbitrator delegated with authority, pursuant to section 9.1 of the Act.

In relation to the payments the tenants have made to the Court, in efforts to satisfy the debt Ordered paid by the landlord, I have considered section 72(2) of the Act, which provides:

#### ***Director's orders: fees and monetary orders***

***72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted***

***(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and***

***(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.***

(Emphasis added)

Therefore, as the landlord has been Ordered to make payment to the tenants I find that the tenants are entitled to deduct payments from rent due each month until such time as the debt is satisfied. There is no need for the tenant's to obtain any other Order of the Court or supply proof of Court documents, as the Residential Tenancy Act contemplates situations where a debt of the landlord to a tenant may be satisfied through rent that is owed to the landlord.

Therefore, as the tenants are entitled to rent abatement toward the debt owed by the landlord, I find that the July 2014 rent has been applied in the manner set out in section 72 of the Act and that the 10 day Notice ending tenancy for unpaid rent issued on July 4,

2014 is of no force and effect. Each time that rent is due and the tenants retain that rent payment; the landlord's debt will be reduced by the amount retained.

I have then considered the 2 Month Notice to end tenancy for landlord's use issued on July 4, 2014; as set out in section 49(3) of the Act:

*(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit*

The tenants essentially raised the issue of good faith; stating that the landlord has no intention of occupying the home as he has several other properties, will not make repairs and has repeatedly attempted to evict them in the past. The landlord said he wishes to move into the unit; while also stating that he has recently attempted to sell the property to the tenants.

Residential Tenancy Branch Policy suggests that 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."*

When the landlord issues a Notice to end tenancy for landlord's use the landlord must have an honest intention, in this case, to reside in the rental unit. The landlord is free to bring forward any documentation that would support this intention, such as a notice to end tenancy at another unit, or some other evidence that shows the landlord is taking steps to occupy the rental unit.

When a tenant indicates that they are questioning the good faith intention of the landlord the landlord must 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.

I have considered the landlord's assertion that he wishes to reside in the rental unit and to make repairs and find that submission lacking authenticity. The reason I find the motive questionable is based, in part, on the landlord's actions during 2013. The landlord issued a 2 month Notice to end tenancy so that he could move into the unit. The tenants attended an August 6, 2013 hearing; the landlord failed to attend that hearing in support of the Notice. The Notice was then cancelled. There was no evidence presented indicating that the landlord requested a review of that decision based on an inability to attend the hearing. If the landlord had intended to do what he says he has always wanted to do; move into the rental unit as soon as he could, his failure to attend that hearing fails to support that declaration.

Then, by the landlord's submission, from February 2014 onward he was attempting to reach agreement with the tenants for a sale of the rental property. This effort failed and

was followed by the Notice that is in dispute. This leads me to find that the landlord's intention was in fact not to live in the unit, but to sell it. The actions, taken together, lead me to find, on the balance of probabilities, that the landlord's statement that he has always wished to reside in the rental unit, lacks conviction.

The tenants indicated that the rental unit is in need of repairs and while I did not hear those submissions in any detail; a landlord is required to maintain a rental unit to the standard required by section 32 of the Act. Repair is necessary whether the landlord plans to live in the home or not. Therefore, the submission that allowing occupation would allow repairs to be made has no weight. The landlord is free and is, in fact, required to maintain the rental unit to the standards set out by the legislation. There is no reason the landlord must reside in the rental unit so that repairs can be made.

Therefore, I find, on the balance of probabilities, that the landlord does not intend, in good faith, to reside in the rental unit and that the 2 month Notice to end tenancy for landlord's use issued on July 3, 2014 is of no force and effect.

This tenancy will continue until it is ended in accordance with the legislation.

### Conclusion

The 10 day Notice to end tenancy for unpaid rent and the 2 month Notice to end tenancy for landlord's use of the property issued on July 3, 2014 are cancelled.

The tenants are entitled to satisfy any monetary Order of the *Director* in accordance with section 72(2) of the Act.

The balance of the tenant's claim is dismissed with leave to reapply.

This decision is final and binding and 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: September 15, 2014

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Residential Tenancy Branch

