



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 453118 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and recovery of the filing fee paid to bring his application. Both parties participated in the conference call hearing with their respective advocates.

### Issue to be Decided

Should the notice to end tenancy be set aside?

### Background and Evidence

At issue in this hearing is a 2 month notice to end tenancy for landlord's use of the property (the "Notice") which the tenant acknowledged having received on June 27, 2014.

As a preliminary matter, the tenant argued that the Notice should be set aside as he received a copy on which no reason for ending the tenancy was indicated. The tenant acknowledged that when the landlord gave him the notice, he was told that they were ending the tenancy because they wanted their son to live in the rental unit. At the hearing, the landlord confirmed that this was the sole reason they wanted to end the tenancy. The landlord indicated that it was simply an oversight which caused them to serve the incomplete Notice. The tenant testified that he was confused as to the reason for ending the tenancy despite the landlord having told him that it was because they intended that their son occupy the unit because in the landlord's evidence for this hearing, they said they intended that their son act as the caretaker for the unit.

The landlord is a corporation in which N.H. is the sole shareholder. They intend that their son will occupy the rental unit and provided evidence that he is returning to Vancouver from New Zealand, having been accepted into the fall semester at the Emily Carr University of Art and Design. The landlord also provided evidence that the son

returned to Canada on August 24 and further provided evidence of the rental of a storage locker to secure his belongings. The landlord's counsel referred to Residential Tenancy Policy Guideline #2 which provides as follows:

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.

The landlord stated that there was no evidence of an ulterior motive.

The tenant argued that another unit in the building was vacated shortly after the landlords served the Notice and that the landlord should utilize that unit rather than evict him. The landlord maintained that they chose the rental unit because it provided a floor plan that best fit the needs of their son and his girlfriend who intends to reside in the unit with him.

The tenant stated that he pays less rent than anyone else in the building and that he is the second oldest resident in the building, which I take to mean that he has lived in the building longer than most others, and argued that the landlord should not evict residents of long standing but should choose to end shorter tenancies. The tenant implied that because he pays less rent than others, this is one of the reasons the landlord chose to end his tenancy. He further testified that in 2007, the landlord unsuccessfully applied to the Residential Tenancy Branch for a 35% rent increase. The tenant alleged that this is proof that the landlord is targeting him and has an ulterior motive for ending the tenancy.

The landlord argued that there are no strictures in the Act preventing the landlord from choosing the most desirable unit regardless of the length of the affected unit's tenancy and a significant amount of time had passed since the application for an additional rent increase, so it should not be determinative of an ulterior motive.

### Analysis

First addressing the preliminary issue of whether the Notice is valid, I accept that failing to indicate a reason for ending the tenancy was merely an oversight on the part of the landlord. I find that the landlord made it clear to the tenant the reason for serving the Notice and that the tenant knew or should have known the information that was omitted from the Notice. Section 68 of the Act permits me to amend a defective notice if the person receiving the notice knew the omitted information and in the circumstances it is

reasonable to amend the notice. I find it appropriate in the circumstances to amend the Notice and I order it to be amended to show that the landlord is a family corporation whose close family member intends to occupy the rental unit. As the landlord is not ending the tenancy for the purpose of installing a caretaker, it is not necessary to consider that ground for ending the tenancy.

The tenant did not dispute that the landlord's son intends to occupy the unit. Rather, he focused his argument on the good faith requirement, arguing that there were other rental units available for the landlord to use to house their son and further argued that he was being evicted because his rent was lower than that of other tenants.

I accept that the landlord truly intends to use the rental unit to house their son. Although the tenant pays the lowest rent of anyone in the building, there is no evidence to suggest that the landlord has undergone a campaign to evict the tenant. Rather, the landlord unsuccessfully attempted to raise the rent through legal means 7 years ago and apparently has again not broached the subject of an additional rent increase. I find it highly unlikely that if the landlord intended to evict this tenant because they were unable to obtain an additional rent increase they would have waited 7 years to act. I find that the mere fact that the tenant pays the lowest rent in the building does not establish an ulterior motive.

I have found no evidence of an ulterior motive or dishonesty of intent on the landlord's part and for that reason I find that the landlord has established that they are acting in good faith. For this reason, I decline to order that the notice to end tenancy be set aside.

Given the length of the tenancy and the fact that the effective date of the Notice had already passed by the time the hearing took place, I find it appropriate to exercise my discretion under section 68(2) of the Act and I order that this tenancy will end on October 31, 2014. I note that the landlord did not request an order of possession at the hearing and therefore one has not been issued.

### Conclusion

The tenant's claim is dismissed. The tenancy will end on October 31, 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: September 11, 2014

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Residential Tenancy Branch

