



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

This was a hearing with respect to the tenant's application to cancel a two month Notice to End Tenancy for landlord's use. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing.

### Issue(s) to be Decided

Should the 2 month Notice to End Tenancy for landlord's use dated September 25, 2014 be cancelled?

### Background and Evidence

The rental unit is a basement suite in the landlord's house in Surrey. The tenancy began in August, 2011. The tenant was served with a one month Notice to End Tenancy for cause on June 30, 2014. The tenant applied to dispute the Notice to End Tenancy. A dispute resolution hearing was conducted on September 10, 2014 and in a decision dated September 11, 2014 the arbitrator ordered that the Notice to End Tenancy be cancelled. The arbitrator found that there was insufficient evidence to show that the landlord had grounds to end the tenancy; she found that the Notice had been given because the tenant made a 911 call to the police to report a physical assault to the landlord by her husband and that the tenant had not acted improperly. As recorded in the September 11<sup>th</sup> decision, the arbitrator also noted that the landlord claimed that she wanted to end the tenancy so that she could use the rental unit to operate a hair salon business.

The tenant testified that she received the September 11<sup>th</sup> decision by mail on September 25, 2014 and the following morning September 26, 2014 the landlord came to her door to deliver the 2 month Notice to End Tenancy that is the subject of this application.

The landlord testified at the hearing she gave the Notice to End Tenancy to the tenant because she wished to have her father-in-law live in the rental unit. She said that he presently lives upstairs with her, her husband and her two children. The landlord also said that she no longer wishes to have rental units in her house.

The tenant testified that the father-in-law currently lives upstairs. She testified that there is another vacant suite in the basement that the landlord was supposed to be converting to use for her beauty salon, but it is still vacant and unused. The tenant testified that she believes the landlord is not acting in good faith in giving the Notice to End Tenancy and asked that it be cancelled.

### Analysis

The Residential Tenancy Policy Guidelines address the matter of good faith in the contest of a Notice to End Tenancy for landlord's use as set out below:

#### **GOOD FAITH REQUIREMENT**

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.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

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.

In the space of a few weeks the landlord has expressed several different and incompatible grounds for seeking to end this tenancy. The landlord claimed to be seeking to end the tenancy for cause, but at the hearing on September 10<sup>th</sup> said that she wanted to end the tenancy because she intended to use the space for a beauty salon. Within the space of a day after receiving the arbitrator's decision she served a new Notice to End Tenancy based on a new and different ground. I have no hesitation in finding that the Notice to End Tenancy dated September 25, 2014 was given in bad faith for an improper motive and that it should be cancelled.

### Conclusion

I order that the Notice to End Tenancy for landlord's use dated September 25, 2014 be and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*. The tenant may apply for compensation in the future if she finds that the landlord is acting to interfere with her quiet enjoyment of the rental unit.

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: November 21, 2014

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Residential Tenancy Branch

