



# 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 seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; her witness; the landlord; her legal counsel and two witnesses.

During the hearing and in their written submission the landlord requested an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Section 49 of the *Residential Tenancy Act (Act)*.

Should the tenant be unsuccessful in seeking to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1).

### Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties for a month to month tenancy beginning on September 1, 2013 for the monthly rent of \$1,100.00 "plus" due on the 1<sup>st</sup> of each month with a security deposit of \$550.00. The agreement includes some handwritten notes indicating a rent of \$1,275.00 and that it would be reduced to \$1,150.00 if the tenant performs some maintenance functions.

The agreement also notes that rent will be reduced by another \$50.00 if the tenant completes construction work;

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on December 22, 2014 with an effective vacancy date of February 28, 2015 (as written on the Notice) citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member.

The landlord submits that she has been living in a basement suite that is permitted classified as commercial/residential use and since she has closed her business she is required by the local municipality to move out of her current location. She also submits that the other unit in the building is currently being used as storage and because of flood last year it is not suitable for occupation at this time.

The tenant submits that she doesn't believe the landlord intends to live in the rental because she has difficulty with the stairs to get up to the unit. The tenant testified that there has recently been a flood and the landlord has been unable to climb the stairs to check out any flood damage.

Both of the landlord's witnesses testified that the landlord's business license is cancelled and that the landlord is capable of climbing the stairs. The tenant's witness testified that the landlord has difficulty with stairs and that the rental unit next door to the subject rental unit was suitable for occupation when she last saw it in September 2014. None of the witnesses were identified as medical experts.

The landlord testified that she was having difficulty with the tenant because she would yell at her adult son and they would fight. The landlord also testified that the tenant has caused extensive damage to the property. As a result of having to deal with the tenant landlord's health is suffering.

I note also that in their written submissions the landlord submits that the tenant did not apply to dispute the notice to end tenancy until January 7, 2014 or 16 days after receiving the Notice. However, the Residential Tenancy Branch has date stamped the tenant's Application as received on January 2, 2014 but did not print up the Notice of Hearing Documents until January 7, 2014.

### Analysis

Section 49(5) of the *Act* stipulates that a tenant may dispute a notice issued under Section 49 by submitting an Application for Dispute Resolution within 15 days of receiving the notice. Section 49(6) states that if the tenant does not submit an

Application for Dispute Resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

Despite the landlord's written submission that the tenant filed her Application too late I find that the tenant filed her Application on January 2, 2015 or 10 days after she received the Notice from the landlord. As such, I find the tenant filed her Application for Dispute Resolution within the requirements set out in Section 49(5).

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

I find, based on the testimony of both parties and witnesses, that there is no evidence to support the tenant's position that the landlord does not intend to occupy the rental unit. Despite the tenant's claim that the landlord cannot use the stairs I am not convinced by way of any medical documentation that the landlord is limited in her use of the stairs at all. I accept that the landlord intends to move into the rental unit.

Residential Tenancy Policy Guideline #2 defines "good faith" as 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.

The Guideline goes on to say that 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 the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

Despite finding above that the tenant's issue of the landlord not being able to use the stairs as a ground to cancel the Notice, I find the landlord herself has provided testimony that raises the issue of good faith.

In her testimony, the landlord identified a number of reasons she was not happy having the tenant in the rental unit, including accusations that the tenant has caused damage to the property and disturbances with the tenant and her adult son. As such, I find the

landlord does have another purpose for ending the tenancy in addition to wanting to move in to the rental unit.

As a result, I order that the 2 Month Notice to End Tenancy for Landlord's Use issued on December 22, 2015 be cancelled.

As I have cancelled the 2 Month Notice to End Tenancy I dismiss the landlord's request for an order of possession.

### Conclusion

Based on the above, I find the tenancy remains in full force and effect until such time as it is 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: January 30, 2015

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Residential Tenancy Branch

