



# 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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 25, 2015 ("2 Month Notice"), pursuant to section 49.

The landlord's agent, GB ("landlord"), the landlord, the tenant and the "tenant's advocate," SW, attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she authorized her son, GB to represent her as an agent at this hearing, in order to assist with English language interpretation. The tenant confirmed that he authorized his advocate, SW, to represent him as an agent at this hearing. Both parties provided signed authorization letters to this effect.

The landlord's agent testified that the tenant was personally served with the 2 Month Notice on January 25, 2015. The tenant confirmed receipt of the 2 Month Notice. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 2 Month Notice on January 25, 2015.

The tenant testified that he personally served the landlord with his application for dispute resolution hearing package ("Application"). The landlord's agent confirmed receipt of the tenant's application. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled?

## Background and Evidence

The tenant testified that this month to month tenancy began on February 18, 2001. Monthly rent in the current amount of \$600.00 is payable on the first day of each month. A security deposit of \$275.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. The landlord owns the rental building which contains 3 rental units on the upper level of the building and a pub on the lower level of the building. The tenant occupies one of two front units, which face the street. The third unit is located at the back of the building, facing an alley and other buildings.

The landlord's 2 Month Notice, entered into written evidence, identifies the following reason for seeking an end to this tenancy on the effective date of March 31, 2015:

- *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.*

The landlord testified that the landlord's son, "CB," wishes to occupy the tenant's rental unit. He said that CB is currently 55 years old and planning to retire from work in the future, likely in one to two years. The landlord stated that CB wants to live in this particular area in order to enjoy the lifestyle and be within walking distance of many local attractions. As per the landlord's evidence, CB is unmarried and has a son, allowing him to live in this noisy area of the city and deal with the noisy pub directly below the tenant's rental unit. The landlord indicated that CB wishes to downsize from his current apartment and live in a smaller unit. The landlord stated that CB currently lives and works in another city and that moving to the tenant's rental unit would be a further commute to CB's work.

The tenant disputes the landlord's 2 Month Notice. The tenant testified that he was initially told that the landlord herself was moving into the rental unit, not her son. The landlord denied this fact and indicated that there must have been a miscommunication. The tenant stated that he does not believe that CB wishes to occupy the rental unit, as CB is unaware as to how noisy the area can be. The tenant stated that his bedroom is above a stairwell and overlooks the front door of the pub, facing a noisy street. He stated that he does not open his front windows because of the amount of traffic and noise, as well as the rain that comes into the unit. The tenant stated that the pub below is open until 1:00 a.m. every day except Friday and Saturday when it is open until 2:00 a.m. He indicated that very loud music is played at the pub. The tenant indicated that when the pub closes, customers congregate on the sidewalk and talk very loudly until around 4:00 a.m. He stated that it is difficult to sleep at night and it is very noisy during

the day. The landlord responded that CB has spent a lot of time in the city area, although he has not lived in the building. The landlord stated that CB will be able to cope with the loud noise.

The landlord stated that all three units are approximately the same size, with 1 bedroom, a living room and a kitchen. The back unit and the tenant's rental unit have 2 doors, including front and back doors. The other "front unit" directly beside the tenant's rental unit, only has a front door, not a back door. The landlord indicated that CB likes the tenant's rental unit because it has a good layout, including two front windows and two doors. The landlord stated that the advantage of having a window in the living room and bedroom, as in the tenant's rental unit, is that CB can have guests over and enjoy the view from the living room. The landlord also stated that the two doors offer the advantage of a separate entrance.

The tenant stated that CB can occupy one of the two other units in the building. The tenant stated that the back unit would be ideal for CB because it is quieter, as it is on the opposite side of the building facing away from the main street. The back unit also has two doors, a full length balcony, windows that can be opened without noise and rain issues, and a great view of the city landscape. The landlord stated that the back unit is not suitable for CB because the view is of an alley, garbage cans, and a loading zone, with only a small view of the city landscape. The tenant also stated that the other front unit can be occupied by CB, as it faces onto the street, where CB can experience the city lifestyle. The landlord stated that the front unit only has one window in the bedroom with a good view, while the window in the living room looks out over the rooftop of a restaurant, which emits cooking exhaust from fans on that roof. The landlord indicated that if CB invited guests over, they would not be able to enjoy the street view from the living room window, as CB would have to bring people into his bedroom to enjoy the street view. The tenant stated that the view from his living room window is only of the businesses across the street, not of the city landscape, as with the back unit.

The landlord stated that the occupants in the other two units have only resided there for a couple of years. They pay \$750.00 rent per month, as per the landlord. The landlord stated that the occupants in the "back unit" received a rent reduction of \$50.00 per month because the landlord wanted long term tenants and she liked the occupants. The landlord later denied stating that the landlord offered rental incentives to encourage longer term tenancies. The landlord stated that CB would be paying at least \$600 monthly rent at the tenant's rental unit, possibly even \$700.00.

The tenant testified that just before Christmas 2014, the landlord made some renovations and improvements to his rental unit, including changing the faucets. The tenant indicated that one month later, he was given the 2 Month Notice by the landlord.

The landlord indicated that the “previous occupant” in the back unit complained about the tenant looking in his windows. The tenant stated that he had some problems with this previous occupant, who was annoyed that the tenant opened his back door, which faces the back apartment, instead of his front window to get rid of noise. The landlord stated that he tried unsuccessfully to negotiate a peaceful resolution between the tenant and previous occupant. The previous occupant vacated the back apartment because of issues with the tenant and noise, after living there for 10 to 12 years. The landlord testified that the tenant was not issued the 2 Month Notice for these reasons.

### Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, notices and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. As per the landlord’s evidence, the landlord’s son intends to occupy the tenant’s rental unit.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord’s use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on January 25, 2015, and filed his Application on January 28, 2015. Therefore, he is within the 15 day time limit under the Act. The onus, therefore, shifts to the landlord to justify the basis of the 2 Month Notice.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*“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 that they do not have an ulterior motive for ending the tenancy.”*

I find that the landlord had a number of ulterior motives for issuing the 2 Month Notice and it was not done in good faith. The tenant indicated that he was initially advised that the landlord intended to occupy the rental unit herself. The tenant's Application even makes reference to the fact that the tenant disputes that the 80 year old female landlord would want to live in such a noisy area. The tenant first learned that the landlord's son intended to occupy the rental unit, when he appeared at this hearing.

I attach considerable weight to the fact that CB did not appear as a witness at this hearing to provide evidence regarding his intended reasons for occupying the rental unit. This is despite the fact that the landlord provided a signed letter from CB, which only states that he intends to occupy the rental unit, without providing any reasons. CB currently lives and works in a different city. There are no plans for him to retire within the foreseeable future, at least not for one to two years or possibly longer. Moving to the tenant's rental unit will increase CB's travel commute each day, as he will be living farther away from his work place.

CB is 55 years old and has a young child who will be staying with him at the rental unit during different periods of time. This is a noisy area with lively nightlife. The pub located directly below the rental unit plays loud music until 1:00 a.m. and 2:00 a.m. Pub customers congregate on the sidewalks and have noisy conversations until 4:00 a.m. The front entrance to the pub and the building stairwell are directly below the tenant's window. Traffic is frequent and noisy on this busy street. This area is noisy at all hours of the day. The tenant indicates that it is difficult to sleep at night. The tenant can clearly hear conversations between people on the sidewalk below his window. The tenant can hear everything occurring in the front unit beside him, as the two bedrooms are next to each other. I find it improbable that CB prefers to live in the tenant's rental unit, particularly when a young child will be with him at different times.

I find that the reasons submitted by the landlord for selecting the tenant's rental unit, as opposed to the other two rental units in the same building, are unreasonable and improbable. CB prefers the tenant's rental unit, as opposed to the quieter back unit in

the same building. I find it unreasonable that it is only the view from the back unit that is the deciding factor for rejecting the back unit. Although there is a view of an alley, the landlord agreed that there was a city view. The back unit is much quieter as it does not face the main street, the building stairwell or the front entrance of the pub. Even the other front unit beside the tenant's rental unit could be a possible choice for CB, but this was again rejected due to the view. The view sought by CB is one of other businesses across the street, not the city landscape, as this is the view from the tenant's rental unit. It is an improbable explanation.

It appears that the landlord may be attempting to evict the tenant in order to obtain a higher monthly rent payment. The other occupants in the front and back units pay \$750.00 per month for rent. The tenant pays only \$600.00. The previous occupant in the back unit was paying only \$600.00 for rent and left the rental unit after 10 to 12 years of tenancy. The new occupants in the back unit pay a higher rent of \$750.00 rather than \$800.00, a discount owing to the landlord's desire to attract long term tenants. This tenant has been residing in his rental unit for 15 years, which is significantly longer than both of the new occupants who have only been there for a "couple years." The landlord also completed renovations and improvements to the tenant's rental unit, which may be evidence of their intention to charge additional rent to recover these costs. The landlord is no doubt aware that she may only issue a rent increase to this tenant with proper notice within a specific time period. A rent increase is limited by the *Regulation*, unless the landlord applies for a higher amount. The landlord stated that CB may pay \$700.00 per month for rent at the tenant's rental unit, an increased revenue for the landlord of \$100.00 per month.

I also find that there were some problems between the previous occupant and this tenant, which may have caused the landlord to issue the 2 Month Notice. Now that the previous occupant has vacated due to the tenant's behaviour, in part, the landlord may wish to avoid future complaints or vacancy by the new occupants. The landlord may be limited in her options to evict the tenant, particularly after 15 years of tenancy.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met the onus of proof to show that the landlord's son intends to occupy the tenant's rental unit in good faith.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated January 25, 2015, is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The landlord's 2 Month Notice, dated January 25, 2015, is cancelled and of no force or effect. This tenancy continues until 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: February 27, 2015

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Residential Tenancy Branch

