



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking Orders to cancel a two month Notice to End Tenancy for the Landlord's use of the rental unit, and to recover the \$50.00 filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Notice to End Tenancy valid or should it be cancelled?
2. Are the Tenants entitled to monetary compensation?

### Background and Evidence

This tenancy began December 15, 2014. Monthly rent was payable in the amount of \$2,100.00.

On April 20, 2015, the Landlord issued the Tenants a two month Notice to End Tenancy, with an effective end date of June 30, 2015 (the "Notice"). The Landlord issued the Notice in accordance with section 49 of the Act, which allows the Landlord to have a close family member, in this case her adult daughter, move in and occupy the rental unit. Under the provisions related to this section of the Act, the Landlord must

also give the Tenants the equivalent of one month free rent when ending the tenancy in this manner.

On May 5, 2015, the Tenants filed their claim to dispute the Notice, saying the Landlord is not ending the tenancy in good faith. They Claim the Landlord issued the Notice in retaliation when the Tenants previously filed for Dispute Resolution seeking monetary orders against the Landlord. That application was heard on May 19, 2015.

The Landlord testified and provided evidence that the reason for issuing the Notice was that the Landlord intended to have her 33 year old daughter, H.F., reside in the rental unit. According to the Landlord, H.F. has been residing with the Landlord since birth and continues to do so as an adult as H.F. suffers from a mental disorder which makes it difficult for her to live independently. The Landlord testified that they have been working for many years towards H.F. living independently. Recently, the Landlord and H.F. have been in conflict such that the Landlord believes they would both benefit if H.F. were to live semi independently. The Landlord confirmed she has arranged for a care giver to live with H.F. in the rental unit and she is optimistic that H.F. will thrive in a semi independent living arrangement.

The Landlord testified that H.F.'s doctor agrees that it is time for H.F. to try to live independently. Introduced in evidence was a copy of a letter from H.F.'s family physician, confirming same.

Also introduced in evidence was a letter from H.F. confirming she intends to live in the rental unit with a care-giver.

The Tenant cross examined the Landlord and suggested that the Landlord only issued the Notice after the Tenants brought on a previous application for monetary relief. The Landlord denied this allegation and reiterated that she simply wished to provide a home for her daughter, H.F., in which to live semi-independently.

The Tenants also testified that they would not have moved into the rental unit had they believed the Landlord intended to end the tenancy so quickly and that although they were aware of H.F., they did not have any reason to believe that the Landlord intended to move her into the rental unit.

### Analysis

Section 49(5) of the Act includes a provision that the Landlord must act in good faith in ending the tenancy.

Residential Tenancy Policy Guideline 2 explains the 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.

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.

It is clear by the Tenants' submissions that they have called the good faith intent of the Landlord into question here.

Based on the foregoing, the affirmed testimony and evidence and on a balance of probabilities, I find as follows.

I am satisfied that the Landlord does not have an ulterior motive for ending the tenancy. I accept the Landlord's testimony that she intends to move her adult daughter, H.F., into the rental unit. I find the Landlord intends in good faith to have her close family member, H.F., occupy the rental unit and I find that there is sufficient evidence submitted by the Landlord to support this intention.

I do not find the primary motive for the Landlord ending the tenancy is to retaliate against the Tenant, or that she is attempting to avoid her responsibilities under the Act.

The Tenants failed to submit any evidence which would establish pressing or ongoing attempts to evict the Tenants for improper or invalid reasons.

**Accordingly, I find the Notice to be valid and enforceable, and I dismiss the Tenant's Application to cancel the Notice.**

In fact, I do not find there were dishonest or undisclosed motives on behalf of either of the parties here. The Tenants simply do not want to move and have asserted their rights under the Act to dispute the Notice.

In the event the Tenants are correct in their allegations, section 51 of the Act would provide them with additional compensation, should the rental unit not be used for the Landlord's stated purpose. For clarity, I include the relevant portion of section 51:

...

- (2) In addition to the amount payable under subsection (1), if
- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
- the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The Tenants, having been unsuccessful in their application, are not entitled to recover their filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 26, 2015

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Residential Tenancy Branch

