



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, issued on April 24, 2015.

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.

In a case where a Tenant has applied to cancel a notice Residential Tenancy Branch Rules of Procedure require the Landlord to provide their evidence and submission first, as the Landlord has the burden of proving that the notice was issued for the reasons given on the Notice.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

### **Issue to be Decided**

Should the 2 Month Notice to End Tenancy issued on April 24, 2014, be cancelled?

### **Background and Evidence**

The parties agreed that the Tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, on April 24, 2015. The reason stated in the notice was,

- All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

(the "Notice")

The parties also agree that the day prior to issuing the Notice the Landlord also issued a 2 Month Notice to end Tenancy for Landlord's use of Property on April 23, 2015 (the "April 23, 2015 Notice"). In the April 23, 2015 Notice, the Landlord claimed she had all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The Landlord sold the rental unit to the purchaser, M.K., effective June 3, 2015. Introduced in evidence was a Form A Transfer indicating same. The Landlord confirmed it was M.K.'s intention to demolish the rental unit, but that he decided to have his elderly father reside in the rental unit for a period of time.

The Landlord testified that she issued the April 23, 2015 Notice on behalf of the purchaser at his request.

The Tenant testified that M.K. did not enter the home during the time he was negotiating its purchase and that she believes he has no intention of residing in the rental unit, nor does she believe he has any intention of having his elderly father reside in the rental unit. The Tenant disputes the Notice, as she believes the notice was not issued in "good faith" and comes as a result of the Landlord determining that it will take some time to have the necessary demolition and building permits in place.

The Landlord confirmed that it was her information that M.K.'s father would be residing in the rental unit. Notably, the purchaser did not attend the hearing to dispute the Tenant's allegations.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

When a Tenant has filed to cancel a notice to end tenancy for Landlord's use and calls into question the "good faith" requirement, the onus lies on the Landlord to prove the two part test as follows:

1. The Landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
2. The Landlord must not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The evidence supports a finding that the purchaser intends to demolish the rental building; the Landlord confirmed that she issued the former notice as the purchaser advised her that was his intentions.

I accept the Tenant's testimony that the purchaser did not view the inside of her rental unit.

The purchaser did not attend the hearing to dispute the Tenant's allegations.

In this case, I accept that the purchaser's intention is to demolish the rental unit, rather than the reasons cited on the Notice; namely, his intention to have his father reside in the rental unit.

Consequently, I grant the Tenant's application and cancel the Notice. The tenancy will continue until legally end in accordance with the Act.

#### Conclusion

The Tenant's application to cancel the 2 Month Notice to End Tenancy for Landlord Use of Property is granted. The tenancy will continue until legally ended in accordance with the Act. The Tenant's application to recover the filing fee is dismissed.

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: June 17, 2015

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Residential Tenancy Branch

