



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNQ CNL CNR O FF

### Preliminary Issues

Upon review of the Tenants' application the male Tenant confirmed that they had only been issued one official notice to end tenancy which was a 2 Month Notice to end tenancy for landlord's use. They argued that the Landlord had placed hand written reasons at the bottom of the Notice so they wanted to ensure they included all relevant reasons on their application.

Based on the above, I determined the Tenants were served one Notice to end tenancy and not three as indicated by their application. Therefore, I proceeded to hear the matters pertaining to the Tenants' request to cancel the 2 Month Notice for landlord's use and to recover the cost of their filing fee from the Landlords. I dismissed the remaining items claimed on the Tenants' application as they are not relevant to the 2 Month Notice to end tenancy.

### Introduction

This hearing was convened to hear matters pertaining to the Tenants' Application for Dispute Resolution filed on August 11, 2015.

The hearing was conducted via teleconference and was attended by the Landlord, her Witness, and both Tenants. The Landlord stated she did not need to call her witness to testify about service as the male Tenant confirmed receipt of the Landlord's evidence.

The male Tenant provided affirmed testimony on behalf of both Tenants. The female Tenant did not testify at the hearing despite her being present with the male Tenant. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The hearing package contained instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

1. *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.14 provides that documentary and digital evidence that is intended to be relied on by the applicant at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing.

Rule of Procedure 3.15 provide that to ensure fairness and to the extent possible, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing [my emphasis added].

The Tenants submitted two documents as evidence when they filed their application; a typed document titled "Request for Repairs" and another typed document titled "30 – Day Notice". This evidence will be considered when making my decision as it was served and received upon the RTB and the Landlord in accordance with the Rules of Procedure.

The Landlord submitted 43 pages of documentary evidence to the Residential Tenancy Branch (RTB) on September 10, 2015. A second package of evidence changing the table of contents along with a couple of other documents was received at the RTB on October 19, 2015.

The Tenant testified that he received three submissions of evidence from the Landlord, one was received via email in September 2015, one was personally served on October 17, 2015; and the last package was personally served upon them on October 19, 2015.

The Tenant confirmed that the documents received from the Landlord in September 2015 included page 2 of 7 of the purchase and sale real estate agreement that was included at page 5 of the evidence received at the RTB from the Landlord.

The Tenants stated that they submitted late evidence to the RTB via fax on October 23, 2015. They argued that their evidence was late because they did not receive the Landlord's evidence until October 17 and 19, 2015 and they needed time to compile their response.

After careful consideration of the above, I will consider the Landlord's evidence that had been received by the RTB on September 10, 2015 and the Landlord's evidence that the Tenants received in September 2015 and on October 17, 2014, as that evidence was clearly served and received within seven days prior to the hearing, pursuant to Rule of Procedure 3.15.

The Tenants' late evidence was not received on file at the time of the hearing and will not be considered as it was not served upon the RTB or the Landlord within the required timeframes. I did however consider the Tenant's oral submissions relating to any relevant evidence in that package.

During the hearing each party was given a full and fair opportunity to provide their evidence orally and respond to each other's testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 2 Month Notice to end tenancy issued July 31, 2015 be upheld or cancelled?
2. Did the Landlord attend the hearing and make an oral request to have possession of their rental unit?

Background and Evidence

The undisputed evidence was the Tenants began occupying the rental unit in May 2004 as occupants with the existing tenant. They were never added to the original tenant's existing tenancy agreement and did not enter into a separate tenancy agreement until the existing tenant moved out.

After the original tenant moved out, the Tenants entered into a written month to month tenancy agreement that began on January 1, 2005. Rent was initially \$1,160.00 per month and has subsequently been increased to \$1,250.00 per month. A security deposit of \$550.00 was credited to the January 1, 2005 tenancy agreement, which was transferred from the original tenant's tenancy, through an agreement between all parties.

A 2 Month Notice to end tenancy was issued on July 31, 2015, listing an effective date of September 30, 2015. The following reason was indicated on the second page of the Notice:

*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 they wish to occupy the rental unit as soon as possible because the house which they are currently occupying has sold. That house was listed for sale in the spring and the Landlord asserted that towards the end of July 2015 they had an indication that a sale was forthcoming so they issued the 2 Month Notice.

The Landlord submitted that they accepted an offer on their home on August 15, 2015 and the subject conditions were removed at the end of August. As per their documentary evidence which included page 2 of the seven page offer of purchase and sale agreement, the purchasers of the Landlord's home take possession on October 30, 2015.

The Tenant testified that this 2 Month Notice was a "clear case of retaliation" due to their July 25, 2015 request for repairs as submitted in their evidence. He argued that it

was not a coincidence that the Landlord issued them the typed 30 Day Notice on July 29, 2015 and then served them the 2 Month Notice on July 31, 2015.

The Tenant argued that they looked on the internet and saw that the Landlord's house had been listed for sale from May to July 31, 2015 by one realtor and then the Landlord switched realtors. It was that new realtor who handled the sale. The Tenant stated that apparently the new realtor was brought on board on July 31, 2015 which was the day they were issued the 2 Month evidence notice, which he found questionable.

The Tenant stated that he has no interest in whether the Landlord sold their property or not as they feel that this eviction was retaliatory to their repair requests. He argued that during their ten year tenancy the Landlord had sold another one of their houses and moved to a new house and not the rental unit house.

The Tenant asserted that every year they ask what the Landlord's intentions are with the rental property. He argued that the Landlords told them that they had no intentions to move in the rental house until the Landlords retired. The Tenant submitted that they gave the Landlord a full year of postdated cheques which is evidence that the Landlord had no intention to move into the rental house.

In closing, the Landlord submitted that their intentions on moving into the rental unit were made clear to the Tenants. She argued that while they had a lot of opportunity to evict the tenants for other reasons such as unpaid rent or utilities, they chose to work with them and not evict them regarding those issues. This is not the case now as they need to move into the rental house. She stated they need possession of their house as soon as possible because they have to be out of their house by October 30, 2015.

### Analysis

Section 49(i) of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

Residential Tenancy Policy Guideline 2 states that 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.

The Guideline goes on to say that 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.

The Tenants have alleged that the 2 Month Notice was retaliatory to their written request for repairs and have called the Landlord's good faith into question. On the surface, when looking at pieces of evidence in isolation it may appear that is the case. However, when I consider the evidence in its totality I favor the Landlord's submission that despite any other issues they have had with the Tenants, they truly intend to occupy the rental house now that their house has sold.

I make the aforementioned finding, in part, due to the fact that the Tenants knew the Landlord's property had been listed for sale since May 2015. In addition, the Tenant's argument that the Notice was suspicious because it was issued the same day the Landlord changed realtors has very little evidentiary weight because it is not unusual or rare for home owners to change realtors once their contract has expired, especially if the house had not sold with the previous realtor.

Also, it is normal practise for a realtor to inform their clients that they need to issue their tenants official Notices to end tenancy if a sale is pending. Therefore, it is not bad faith that the Landlords issued the Notice on July 31, 2015 when they began working with the new realtor who was bringing them a sale that later materialized.

The Tenants had knowledge that the Landlord had intended on living in the rental house at some time in the future as they admitted that they were told the Landlord had intended on moving in when the Landlord retired. That being said, it is within a landlord's right to occupy their property at any time in their lives, regardless of whether they own or have sold other property; as long as the Landlord ends any existing tenancies in accordance with the *Act*.

Upon review of the Tenants' written request for repairs dated July 25, 2015, I find the timing of that request to be presumptuously suspicious given the Landlord's ongoing attempts to collect the unpaid municipal utility bills. That being said, I find it a mere coincidence that the issues of unpaid utilities and repair requests were happening right around the time the Landlord's house sold, after being on the market for upwards of 3 months. The Landlord did not hide the fact that their house was for sale and the Tenants had full knowledge of that. Therefore, I do not find the timing of the Tenants' request for repairs is proof on its own that the 2 Month Notice was issued in bad faith.

The undisputed evidence was the Landlord has sold the home she is currently occupying. The purchaser will take legal possession of the Landlord's home on October 30, 2015 at which time the Landlord needs to move somewhere. The Landlord issued a Notice to end tenancy as provided for by Section 49(i) of the *Act* as she intends on occupying the rental unit house.

After careful consideration of the foregoing, the totality of the evidence before me, and on a balance of probabilities, I find the Landlord has proven the good faith requirement and the reasons for the 2 Month Notice. Accordingly, I dismiss the Tenants' application in its entirety, without leave to reapply. The 2 Month Notice issued July 31, 2015 is of full force and effect.

Section 55 of the Act provides that an Order of Possession must be provided to a landlord if a tenant's request to dispute a Notice to End Tenancy is dismissed and the landlord makes an oral request for an Order of Possession during the scheduled hearing.

In her closing remarks the Landlord stated they need possession of their house as soon as possible because they have to be out of their current house by October 30, 2015. I interpreted the aforementioned statement to be the Landlord's request for an Order of Possession for as soon as possible, pursuant to section 62 of the *Act*. Accordingly, I award the Landlord an Order of Possession effective 2 Days upon service.

### Conclusion

The Tenants were not successful in disputing the 2 Month Notice to end tenancy and the Landlord has been granted an Order of Possession pursuant to section 55 of the *Act*.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

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: October 26, 2015

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Residential Tenancy Branch

