



# Dispute Resolution Services

Page: 1

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 issued by the landlord for the landlord's use of property. 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.

### **Issues to be Decided**

Has the landlord validly issued the notice to end tenancy? Has the landlord sold the rental unit? Does the purchaser or a close family member of the purchaser intend, in good faith, to move into the rental suite?

### **Background and Evidence**

The tenancy started approximately three years ago. The monthly rent is \$350.00. The tenant stated that on December 31, 2015, he was served with a notice to end tenancy for landlord's use of property with an effective date of March 02, 2016. The landlord did not file a copy of the notice to end tenancy. The tenant filed a copy of page two of the notice. In the absence of the full notice to end tenancy, I relied on the testimony of the parties to describe the notice.

Both parties agreed that the notice was dated December 31, 2015 with an effective date of March 02, 2016 and served to the tenant in person on the date it was issued. The reason for the notice was that all of the conditions for the sale of the rental unit were satisfied and that the purchaser has asked the landlord in writing to serve the tenant with a notice to end tenancy because he intends to move into the rental unit. The tenant filed his application to dispute the notice in a timely manner.

The landlord filed a copy of the contract of purchase and sale, the letter of removal of "subject to clauses" and a letter from the purchaser asking for vacant possession.

Not all the documents are signed by both parties. The landlord has also filed a copy of a deposit cheque that was issued to the realty company. This cheque does not have any information to tie the deposit to the address of the rental property. The landlord filed a copy of the listing that shows that the property is listed up to July 13, 2016, has not sold and is still on the market.

The tenant stated that the landlord has not sold the property but has created these documents with the help of his friend. The tenant believes that the landlord wants to renovate the unit and rent it at a higher rent.

### **Analysis**

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove he is acting in good faith. Based on the testimony of both parties, I make the following findings:

1. The subject removal document is not signed by both buyer and seller
2. The landlord's evidence indicates that the rental unit is still on the market
3. The copy of the deposit cheque filed into evidence by the landlord does not have any information to tie the deposit to the rental unit address

Based on the evidence in front of me and the testimony of the parties, I find that the landlord has not proven that the rental property has sold. Therefore I find that on a balance of probabilities, it is more likely than not that the landlord did not act in good faith when he served the tenant with the notice to end tenancy for landlord use of property. For these reasons I must set aside the notice to end tenancy. The tenancy will continue on the original terms of the tenancy agreement.

### **Conclusion**

The notice to end tenancy is set aside and the tenancy will continue.

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 19, 2016

---

Residential Tenancy Branch

