



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** CNL, MNDC, FF

### **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. The tenant also applied for a monetary order for compensation in the amount of \$6,000.00 for harassment and \$100.00 for the recovery of the filing fee.

Both parties appeared 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. The parties acknowledged receipt of evidence submitted by the other. Both parties gave affirmed testimony.

### **Issues to be Decided**

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to move into the rental suite? Is the tenant entitled to compensation for harassment? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on February 01, 2012. The monthly rent is \$1,500.00. The rental unit is located in the basement of the rental home. The upper suite is rented out separately to a family with children.

On November 18, 2015, the landlord served the tenant with a notice to end tenancy for landlord's use of property. The tenant disputed the notice and the parties attended a hearing on January 15, 2016 to resolve this dispute. The landlord did not meet his burden of proof and the matter was dismissed.

On January 21, 2016, the landlord served the tenant with a second two month notice to end tenancy for landlord's use of property to be effective on April 03, 2016.

The reason the landlord gave the notice to the tenant is described as, 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. The tenant disputed the notice in a timely manner.

The agent for the landlord stated that the owner of the property who currently resides abroad has the immigration status of permanent resident in Canada. The landlord filed a copy of his permanent resident card which indicates that the card will expire on April 04, 2016. The landlord also filed a copy of his travel itinerary which shows that the landlord will be returning to Canada on April 02, 2016. The agent for the landlord stated that the landlord intends to reside in the rental unit while he follows up on the renewal of his permanent resident status card.

In his rebuttal to the landlord's testimony, the tenant referred to the timing of the first notice which coincided with a disagreement between the tenant and the occupants of the upstairs suite. The tenant also stated that he was a long term good tenant and the landlord should look at ending the tenancy of the upstairs occupants instead.

The tenant has also made a monetary claim for \$6,000.00 for harassment. The tenant stated that the two notices to end tenancy have caused him and his wife a great deal of angst and stress which has resulted in medical issues. The tenant stated that the notices created fear and anxiety and a loss of quiet enjoyment. Part of the tenant's claim includes compensation for his time spent to file applications for dispute resolution, attend hearings and look for alternative accommodation.

### **Analysis**

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove they are acting in good faith. Based on the sworn testimony of the landlord and the documents filed into evidence which includes a copy of the landlord's permanent resident card and travel itinerary, I find that the landlord intends in good faith to occupy the rental unit for his personal use.

The tenant argued that the landlord has failed to act in good faith and in the absence of any evidence to support this allegation; I find the landlord has met the good faith requirement of the legislation and intends to move into the rental unit. Therefore, I find that the notice to end tenancy must be upheld and accordingly I dismiss the tenant's application to cancel the notice to end tenancy.

At the hearing the landlord made a request under section 55 of the legislation for an order of possession.

Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. Every tenancy agreement contains an implied covenant of quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord’s actions that rendered the premises unfit for occupancy.

In regard to the tenant’s monetary claim for compensation for the loss of quiet enjoyment, I have reviewed the submissions of both parties and I find that the last two months of the tenancy were very stressful on both parties for different reasons. It is my determination that the parties found themselves in a situation which had progressively evolved and for which each had made some contribution to its unfolding. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty that follows the receipt of a notice to end tenancy, the tenant did not provide compelling evidence to support his claim of compensation for harassment and therefore the tenant’s claim for compensation is dismissed. The tenant has not proven his claim and therefore must bear the cost of filing his application.

### **Conclusion**

The notice to end tenancy is upheld and I grant the landlord an order of possession effective on **April 03, 2016**. The remainder of the tenant’s application 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: March 09, 2016

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Residential Tenancy Branch