



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, CNL

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant disputing an additional rent increase and seeking an order cancelling a notice to end the tenancy for landlord's use of property.

The tenant and both landlords attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Have the landlords established that the notice to end the tenancy was given in good faith and in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlords have increased the rent contrary to the *Residential Tenancy Act* and the regulations?

### Background and Evidence

**The first landlord** testified that the rental unit is a cottage situated on property purchased by the landlords on September 27, 2015 while the tenant was already living there. A copy of the tenancy agreement between the previous owners and the tenant has been provided, and the tenancy actually began on November 1, 2012 on a month-to-month basis. Rent in the amount of \$800.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$400.00 which is currently held in trust by the current landlords, and no pet damage deposit was collected.

The landlord further testified that on January 20, 2016 the landlords personally served a Notice of Rent Increase upon the tenant, a copy of which has been provided. The notice states that the rent has not previously been increased and the proposed increase of \$23.20 will be effective May 1, 2016.

On January 26, 2016 the landlords served the tenant personally with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has also been provided. The notice is dated January 26, 2016 and contains an effective date of vacancy of March 31, 2016. The reason for ending the tenancy states: 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 landlords' son has been living in the landlords' basement but it had previously been occupied by a person who had pets and the landlords' son is highly allergic. The carpets are soiled with cat urine and cat dander that have bothered their son's asthma. The landlords want the rental unit for their son to reside in. He is going to school and working part time, but in his field, the landlord does not expect the son to obtain full time employment or be able to move out any time soon.

When asked about an Addendum to the tenancy agreement, the landlord testified that it was attached to the tenancy agreement inherited by the landlords, but it doesn't appear to be a proper agreement. It is in general terms and contradictory, and the landlord testified that no such agreements were made between the landlords and the previous owners. The Addendum states, in part: 1) In the event that the property at ... is sold, the tenant is guaranteed to remain as a tenant in the rental unit with no increase of rent for a period of one year from the date said property is sold.

**The second landlord** testified that when the landlords purchased the property, they talked to the previous owners and they asked if the landlords wanted to keep the tenancy or have the previous landlord give a 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlords said they would keep the tenant. At no time did the previous owners bring to the landlords' attention anything about the Addendum.

The landlords' son has asthma and allergies and is acutely in respiratory distress. The carpets in the landlords' home have pet dander and urine, and the previous residents were smokers, none of which are suitable for the landlords' son.

The landlord further testified that her understanding of the *Residential Tenancy Act* is that the previous tenancy becomes null and void after the rental property is purchased.

In the event that the 2 Month Notice to End Tenancy for Landlord's Use of Property is upheld, the landlords are content with an Order of Possession effective April 30, 2016 to afford the tenant more time to find alternate accommodation.

**The tenant** testified that the tenancy agreement was inherited by the landlords and they accepted it. It's their responsibility to read it and understand it fully. The Addendum is clear, that no rent increases will be permitted and the tenant is guaranteed residence for at least one year after the sale of the rental unit.

The tenant is also allergic to cats, and the landlords were aware when they purchased the property that the previous owners had cats. If any mistakes had been made by real estate agents, or new owners, or the previous owners, they are not the fault of the tenant. The tenant should not be evicted for that and all parties were well aware of the term in the Addendum.

### Analysis

Firstly, with respect to the landlord's testimony that a previous tenancy agreement becomes null and void once rental property is sold, the *Residential Tenancy Act* states that the tenancy continues in the same terms unless the purchaser requests in writing that the seller give a notice to end the tenancy to the tenant because the purchaser or a close family member intends in good faith to occupy the rental unit. In this case, that didn't happen, and the landlord testified that a conversation took place between the landlords and the previous owners about that and the landlords agreed to keep the tenancy. Therefore, I find that the tenancy continued in the same terms.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Act*, which can include the reasons for issuing it. In the event that a 2 Month Notice to End Tenancy for Landlord's Use of Property is given, the onus is on the landlord to establish good faith intent to use the rental unit for the purpose contained in the notice. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. Also, considering the testimony of the parties, I am satisfied that the landlords have no ulterior motive or reason for issuing the notice, and have issued it in good faith.

With respect to the tenant's claim that the Addendum makes it clear that a purchaser will not end the tenancy prior to one year after purchase, or will not increase the rent for one year after purchase, I find that term to be unconscionable, in that it is contrary to the *Residential Tenancy Act* and the previous landlord in 2012 would have had no way of determining what the rental property might be used for after it was purchased 3 years later. The landlords did not agree to that term.

Having found that the term in the Addendum is unconscionable, it is also unenforceable. Therefore, the tenant's application is dismissed and I find that the landlords are entitled to an Order of Possession. The landlord testified that the effective date should be April 30, 2016 to afford the tenant with more time to find alternate accommodation due to the delay in this hearing being scheduled, and I find that to be reasonable.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlords effective April 30, 2016 at 1:00 p.m. and the tenancy will end at that time.

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 16, 2016

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Residential Tenancy Branch