



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNL, FF

### Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenants have applied to cancel two month Notices to end tenancy for landlords' use of the property issued on February 15, 2016 and March 1, 2016 and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered the relevant submissions.

### Preliminary Matters

At the start of the hearing it was established that the landlord initially issued a two month Notice to end tenancy for landlords' use of the property on February 15, 2016. The landlords' legal counsel issued a March 8, 2016 letter to the tenants, informing the tenants that the February 15, 2016 Notice was withdrawn. The tenants were advised to withdraw their application for dispute resolution and it was acknowledged the tenants could recover the filing fee cost. The letter indicated a new Notice to end tenancy was being issued.

The tenants did not cancel this hearing. On March 9, 2016 the tenants submitted an amendment to their application, to include dispute of the Notice issued on March 1, 2016. The landlord confirmed receipt of the amendment within the required time limit.

At the start of the hearing it was established that the landlord could not unilaterally withdraw a Notice ending tenancy. There was agreement that the initial Notice would be withdrawn, by agreement, as the March 1, 2016 Notice was issued for the same reason.

The tenants mentioned a late evidence submission, made on April 14, 2016. That evidence was not before me and was not made in accordance with section 2.5 of the

Residential Tenancy Branch Rules of Procedure. The tenants were at liberty make oral submissions.

Issue(s) to be Decided

Should the two month Notice to end tenancy for landlords' use of the property issued on March 1, 2016 be cancelled?

Background and Evidence

The tenancy commenced on October 1, 2001. Rent is currently \$1,050.00 due on the first day of each month. The rental unit is one of four in the building and is located on the upper floor.

On February 15, 2016 the landlord issued a two month Notice to end tenancy for landlords' use of the property. This was followed by a second Notice, issued on March 1, 2016. Both Notices were based on a single reason:

*"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 submitted that prior to 2015 they owned a home in the city; that home was sold in 2015 at which point the landlords went to Mexico. The landlords plan to reside in the rental unit once they return from Mexico. That unit will then become the landlords' principle residence.

The landlords submitted title search documents to prove that they sold their home.

The tenants made submissions setting out their belief that the landlord has not issued the Notice in good faith and have an ulterior motive in issuing the Notices. The tenants supplied copies of email communication and notes created based on conversations with the landlords which were referenced during the hearing.

In April 2015 the landlord delivered a letter to the tenants, requesting a rent increase. An April 29, 2015 letter issued by the landlord was supplied as evidence. The landlord had proposed a rent increase in the sum of \$60.00 per month, effective August 1, 2015, for one year; a second increase of \$60.00 effective August 1, 2016 and a final \$60.00 rent increase effective August 1, 2017, for a two year period.

On May 7, 2015 the tenants responded, informing the landlord that the allowable rent increase for 2015 was 2.5%; or \$26.00. The tenants suggested the landlord raise the rent by the allowable sum and they offered to pay \$700.00 toward carpet replacement.

On May 23, 2015 the landlord issued a proper Notice of Rent Increase, raising the rent by the allowable sum effective September 1, 2015.

On February 18, 2016 the tenants received the initial two month Notice to end tenancy.

Tenant C.S. took notes of a conversation with landlord L.J. that took place on February 18, 2016. During that conversation the landlord told the tenant they would be purchasing a condo in the city and wanted to take possession of the rental unit as they did not wish to live in their fifth wheel. The landlord told the tenant that there was no connection between the failed attempt to increase the rent and the Notice ending tenancy.

On the evening of February 18, 2016 landlord G.J. said they might be open to negotiation with the tenants. The tenants then offered to pay the previously suggested rent increase. Later that same day the landlord G.J. called tenant C.S. and said the tenants could remain in the rental unit. The landlord proposed a rent increase to \$1,350.00. The landlord said they would need to have access to the unit to complete renovations and would work with the tenants regarding a rent increase.

On February 19, 2016 landlord L.J. called tenant C.S. and asked that he make his best proposal and that they would revisit their proposal.

On February 20, 2016 the tenants sent the landlords an email; attaching a copy of the rent increase that had been proposed in April 2015. The tenants informed the landlord that they now accepted that proposal completely and offered to pay the retroactive sum of rent plus \$500.00 toward carpets.

The landlords' responded on February 22, 2016, with a number of other conditions added. The landlords wished to have the tenancy convert from a month-to-month term to a fixed term. The tenants would need to allow the landlord to use one-half of the storage room in the basement; the tenants would be required to accommodate renovations and accept four additional rent increases after July 2018. The agreement issued by the landlord dated February 21, 2016 included:

*"if you are in agreement with the above please sign and return by Feb. 25, 2016 and we will withdraw the Notice to End Tenancy."*

(Reproduced as written)

The tenants responded, agreeing to the terms offered by landlord. The tenants expressed concern regarding the change to a fixed-term tenancy and asked that this term be deleted. The tenants were also concerned about losing storage space.

On February 24, 2016 the tenants received a copy of the residential tenancy agreement that was to be signed. That agreement was for a fixed term; included a liquidated damages clause of \$2,170.00 and additional payment toward the security deposit. On the same date the landlords' son delivered a tenancy agreement for signature. That

agreement included different terms, including a requirement that the tenants vacate at the end of the fixed term; August 1, 2016.

The tenants sent the landlords an email expressing concern regarding the fixed term that would require the tenants to vacate. The landlord responded assuring the tenants that there would be no radical change and that the landlord wanted the tenants to stay in the rental unit. The landlord wrote that if the tenants did not agree to the proposed terms then "it is a deal breaker and the Notice to End Tenancy remains." The landlord went on to write that if the tenants did not agree to the lease as proposed the landlords would move into the unit on May 1, 2016.

On February 25, 2016 the landlord informed the tenants that they were no longer willing to work out a lease agreement and that the Notice would not be withdrawn. The landlord said that they would now live in the unit until a condo purchase was completed.

During the hearing the landlords were asked to respond to the tenants' submission that they have failed to act in good faith and the submission that the landlord has an ulterior motive for the eviction.

The landlords' said they did not have anywhere else to reside once they returned from Mexico. The landlord does not believe that the negotiations carried out in relation to the February 15, 2016 Notice ending tenancy should have any bearing on the second Notice issued on March 1, 2016.

Counsel for the landlords' stated that the landlord has made it clear that they intend to occupy the rental unit and that they will purchase a condo when they are able. The tenants have been aware all along that the landlords intended to occupy the rental unit.

### Analysis

Residential Tenancy Branch (RTB) policy #11 sets out the ability of a party to amend or withdraw a Notice ending tenancy:

*A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.*

At the start of the hearing the parties agreed that the initial Notice issued on February 15, 2015 would be withdrawn and abandoned. The second Notice issued on March 1, 2016 provided an identical reason for ending the tenancy.

The tenants raised the issue of good faith, which Residential Tenancy Branch Policy references:

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*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.***

(Emphasis added)

After considering the evidence before me I find that the landlords are planning to occupy the rental unit. However, after hearing the tenants' submission regarding the motivation of the landlords and the landlords' response, I find that the landlord has failed to act in good faith and has another motive for ending this tenancy.

I have reached this conclusion after considering the landlords' attempt to have the tenants enter into a new tenancy agreement which included proposed terms that were increasingly less advantageous to the tenants. The tenants agreed to rent increases above the allowable sum and payment toward new carpets. This led the landlord to insist on a fixed-term tenancy; then a fixed-term tenancy requiring vacant possession at the end of the term, with additional terms that I find were only advantageous to the landlord.

It is clear that in April 2015 the landlord wished to obtain a rent increase that failed to comply with the legislation. After the February 15, 2016 Notice to end tenancy was issued the landlord commenced discussions with the tenants on terms that led the tenants to believe the Notice to end tenancy would be cancelled.

On February 21, 2016 the landlords asked the tenants to sign a new tenancy agreement no later than February 25, 2016, at which point the Notice to end tenancy would be withdrawn. On February 24, 2016 the landlord wrote that if the tenants would not accept the new tenancy terms the Notice to end tenancy would remain; that the tenants' refusal would be a "deal breaker" and that the landlord would then move into the unit on May 1, 2016. The landlord expressed their desire to see the tenants remain in the rental unit; which I find was inconsistent with the landlords' submissions made during this hearing that they wished to occupy the rental unit. It appears that the landlord planned on occupying the rental unit only if the negotiations with the tenants failed.

From the evidence before me, based on the balance of probabilities I find that the landlord issued the Notice as means of extracting additional rent from the tenants and

as a means of imposing additional terms, to the advantage of the landlord. This is the only conclusion that I can draw from the evidence before me.

The March 1, 2016 Notice to end tenancy was issued five days after the landlord failed to achieve the agreement of the tenants to increase the rent and alter the tenancy terms. Even though the landlord would occupy the rental unit, that occupation would be based on the failure of the landlords to achieve the desired tenancy terms; which I find formed the motivation for the Notice to end tenancy and fails to support good faith on the part of the landlord.

Therefore, I find pursuant to section 62(3) of the Act that the two month Notice to end tenancy for landlords' use of the property issued on March 1, 2016 is cancelled. The Notice is of no force and effect. The tenancy will continue until it is ended in accordance with Act.

As the application has merit I find that the tenants may deduct the \$100.00 filing fee from the next months' rent due.

### Conclusion

The two month Notice to end tenancy for landlords' use of the property issued on February 15, 2016 is of no force and effect.

The two month Notice to end tenancy for landlords' use of the property issued on March 1, 2016 is of no force and effect.

The tenancy will continue until it is ended in accordance with the Act.

The tenants are entitled to filing fee costs.

This decision is final and binding and 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: April 20, 2016

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Residential Tenancy Branch