



# 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 convened in response to the Tenant's Application for Dispute Resolution in which the Tenant applied to cancel a Notice to End Tenancy and to recover the fee for filing this Application.

The Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. He stated that he is not certain but he believes those documents were served on June 20, 2016. The Landlord stated that he believes he received these documents sometime near the beginning of June of 2016.

On June 20, 2016 the Landlord submitted 18 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant on June 20, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On June 22, 2016 the Tenant submitted 84 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on June 22, 2016. The Landlord acknowledged receipt of this evidence and noted that it was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure.

On June 27, 2016 the Tenant submitted 48 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on June 27, 2016. The Landlord acknowledged receipt of this evidence and noted that it was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. I find that the evidence served to the Landlord on June 20, 2016 and June 27, 2016 was not served in accordance with rule 3.14.

The Tenant was advised that neither of his two evidence packages were being accepted as evidence as they were not served in accordance with rule 3.14 of the Residential Tenancy Branch Rules of Procedure. He was advised that he may refer to any of the documents he submitted during the hearing and that if, during the hearing, it appears they are highly relevant to the issues in dispute we would discuss the need for an adjournment to ensure the Landlord had sufficient time to consider the documents. The Tenant did not refer to any specific documents during the hearing and there appeared to be no need to adjourn the hearing.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

#### Issue(s) to be Decided

Should the Notice to End Tenancy be set aside?

#### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 15, 2007 and that the Tenant agreed to pay monthly rent by the first day of each month.

The Landlord stated that on May 27, 2016 a Two Month Notice to End Tenancy for Landlord's Use of Property was mailed to the Tenant. The Tenant stated that he received this Notice on May 28, 2016 or May 29, 2016.

The Landlord and the Tenant agree that the Two Month Notice to End Tenancy that is the subject of these proceedings:

- is dated May 27, 2016;
- declares that the Tenant must vacate the rental unit by July 31, 2016; and
- declares that the tenancy is ending because the Landlord intends to convert the unit for use by a caretaker, manager, or superintendent of the residential property.

In support of the Notice to End Tenancy the Landlord declared that:

- he hired a resident manager for this residential complex in the middle of May of 2016;
- although there have been resident managers at the complex in the past, there has not been a resident manager in recent history;
- the new resident manager does not currently have a permanent residence;
- the new resident manager was displaced from her previous residence by a fire;
- the new resident manager is periodically staying with the occupant of unit 3, for whom she provides personal care;
- the occupant of unit 3 moved into the rental unit on, or about, May 15, 2016;

- the new resident manager began periodically staying with the occupant of unit 3 sometime near the end of May of 2016;
- the new resident manager periodically stays with friends who do not reside in the residential complex;
- the new resident manager was previously the resident manager at a different residential complex owned by the Landlord;
- a resident manager is no longer required at her previous place of employment as there was a fire in that complex; and
- since the new resident manager started working in the residential complex a variety of maintenance and safety concerns have been addressed.

The Tenant stated that he was informed that there was a new resident manager in the residential complex approximately two weeks after the new resident manager began working in the residential complex.

The Tenant contends that the resident manager could move into unit 2 of this residential complex as it is currently vacant. The Landlord stated that unit 2 is a bachelor suite with a shared bathroom which he does not believe is suitable for a resident manager.

The Tenant contends that the resident manager could move into unit 8 of this residential complex as the occupant of that unit recently moved out. The Landlord stated that he has served the occupant of unit 8 with two notices to end tenancy although he is not aware that the occupant has actually vacated that unit. He stated that unit 8 is also a bachelor suite with a shared bathroom which he does not believe is suitable for a resident manager.

The Tenant contends that the resident manager could have moved into unit 4, which has its own bathroom. He stated that unit 4 has been vacant since September of 2015 and that someone just moved into that unit on July 01, 2016.

The Landlord stated that unit 4 was vacant when this Two Month Notice to End Tenancy was served on the Tenant; that unit 4 has been vacant since September of 2015; that somebody just moved into unit 4 on July 01, 2016; and that he had committed to renting unit 4 to the new occupant prior to serving the Notice to End Tenancy on May 27, 2016.

The Tenant contends that the Landlord is attempting to end his tenancy because he is upset with him for reporting a variety of deficiencies with the rental unit to the Landlord, the Residential Tenancy Branch, and municipal authorities.

The Landlord stated that the Notice to End Tenancy was not served in retaliation for the Tenant reporting various deficiencies and that he is willingly complying with any directions to upgrade the complex.

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution hearing in July of 2015. The Tenant provided the file number for this hearing

and both parties agreed that I could refer to that decision prior to rendering a decision in this matter. The file number of that hearing appears on the first page of this decision.

It is apparent from the information in this decision that the Tenant had made numerous complaints to the Landlord and the municipality, which the Arbitrator found were legitimate concerns. In her decision the Arbitrator ordered the Landlord to remedy a variety of deficiencies with the rental unit and the Tenant was granted compensation of \$500.00.

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution hearing in April of 2016. The Tenant provided the file number for this hearing and both parties agreed that I could refer to that decision prior to rendering a decision in this matter. The file number of that hearing appears on the first page of this decision.

It is apparent from the information in this decision that on February 25, 2016 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause and that the Landlord was attempting to end the tenancy because the rental unit needed to be vacated in order to comply with a government order, which related to orders the Landlord received in 2015. In his decision the Arbitrator concluded that the Landlord did not have grounds to end this tenancy as he submitted no evidence of an order requiring the rental unit to be vacated.

The Tenant stated that this tenancy was the subject of a second dispute resolution hearing in 2015. The Landlord stated that he cannot recall a second dispute resolution hearing in 2015 although he agrees that I can refer to that decision prior to rendering a decision in this matter. The file number of that hearing appears on the first page of this decision.

It is apparent from the information in the decision dated October 22, 2015 that the Tenant received a Ten Day Notice to End Tenancy for Unpaid Rent in September of 2015. In her decision the Arbitrator concluded that the Landlord did not have grounds to end this tenancy for unpaid rent in September 2015 because the Tenant had the right to withhold rent.

At the outset of the hearing the Landlord stated that he wished to call witnesses. When it was time to call witnesses the Landlord stated that his witnesses would provide evidence of how the Tenant has caused disturbances in the residential complex. Upon being advised that the Tenant's behaviour is not relevant to an attempt to end the tenancy pursuant to section 49(6)(e) of the *Act*, the Landlord indicated he did not need to call his witnesses.

### Analysis

On the basis of the undisputed evidence I find that the Landlord has recently hired a resident manager for this residential complex, who is periodically residing with the occupant of unit 3 in this complex. On the basis of the testimony of the Landlord and in

the absence of evidence to the contrary, I accept that the Landlord would like the new resident manager to reside in the rental unit currently being occupied by the Tenant.

In adjudicating this matter I have placed no weight on the Tenant's submission that the resident manager could have moved into units 2 or 8, which he contends are vacant. I find it reasonable that the Landlord does not find either of these two units suitable for a resident manager, as they are bachelor suites that are not equipped with their own bathroom.

Section 49(6)(e) of the *Act* authorizes a landlord to end a tenancy if the landlord intends in good faith, to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

Residential Tenancy Branch Policy Guideline #2, with which I concur, reads, in part:

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.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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.

I find that the Landlord has submitted insufficient evidence to establish that he is ending this tenancy in good faith. I find that there are reasonable grounds to conclude that in addition to converting the unit for a residence for resident manager, the landlord is also using this Two Month Notice to End Tenancy as a means of removing the Tenant from the residential complex. I therefore find that the Two Month Notice to End Tenancy has not been served in good faith and I grant the Tenant's application to set aside the Two Month Notice to End Tenancy that is dated May 27, 2016.

In determining that the Two Month Notice to End Tenancy was not served in good faith I was influenced, to a minor degree, by the undisputed evidence that a unit suitable for a resident manager has been vacant between September of 2015 and June of 2016. Although the Landlord contends that he entered into a tenancy agreement with the person who moved into the suitable unit sometime prior to serving the Tenant with the Two Month Notice to End Tenancy, he produced no evidence to corroborate that testimony.

In determining that the Two Month Notice to End Tenancy was not served in good faith I was influenced, to some degree, by the Residential Tenancy Branch decision of July 27, 2015. This decision clearly establishes that the issues raised by the Tenant resulted in significant inconvenience and expense to the Landlord, which supports the Tenant's submission that the Landlord is attempting to end this tenancy for reasons other than the need to house his new resident manager.

In determining that the Two Month Notice to End Tenancy was not served in good faith I was influenced, to some degree, by the Residential Tenancy Branch decision of February 25, 2016. This decision shows that the Landlord has been unsuccessful in an attempt to end the tenancy approximately three months prior to serving the Tenant with this Two Month Notice to End Tenancy. In my view this unsuccessful attempt to end the tenancy supports the Tenant's submission that the Landlord is attempting to end this tenancy for reasons other than the need to house his new resident manager.

In determining that the Two Month Notice to End Tenancy was not served in good faith I was influenced, to some degree, by the Residential Tenancy Branch decision of October 22, 2015. Although this unsuccessful attempt to end the tenancy was many months prior to the service of this Two Month Notice to End Tenancy, I find that it is evidence of the Landlord's pattern of attempting to end this tenancy without proper grounds. I find this pattern of behavior supports the Tenant's submission that the Landlord did not serve this Two Month Notice to End Tenancy in good faith.

In determining that the Two Month Notice to End Tenancy was not served in good faith I was influenced, to some degree, by the Landlord's attempt to call witnesses to provide evidence of how the Tenant is disturbing occupants of the rental unit. I find that this establishes that the Landlord has a secondary reason for attempting to end this tenancy and that he is not solely ending this tenancy because he needs to house his new resident manager.

I find that the Tenant's application has merit and that he is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Two Month Notice to End Tenancy has been set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

I find that the Tenant has established a monetary claim, in the amount of \$100.00, in compensation for the fee paid to file this Application for Dispute Resolution. I hereby authorize the Tenant to reduce one rent payment by \$100.00 in full satisfaction of this monetary claim.

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: July 05, 2016

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Residential Tenancy Branch