



# 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 by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property and to recover the filing fee from the landlords for the cost of the application.

The tenant and one of the landlords attended the hearing and the landlord also represented the other landlord. The parties each gave affirmed testimony and were given the opportunity to question each other and make closing submissions. The parties have provided evidentiary material in advance of the hearing, 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 accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord** testified that she and her father purchased the rental home in November, 2015 and the tenant was already a tenant in the basement suite. The landlord's parents occupy the upper levels but reside in China. A tenancy agreement between the tenant and the previous owner has been provided and it states that the tenancy commenced on July 1, 2015 for a fixed term to end on June 30, 2016 thereafter reverting to a month-to-month tenancy. The tenant still resides in the rental unit.

Rent in the amount of \$850.00 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 tenant paid a security deposit in the amount of \$425.00 which is held in trust by the current landlords, and no pet damage deposit was collected.

The landlord caused the tenant to be served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided. It is dated June 6, 2016 and contains an effective date of vacancy of August 31, 2016. The reason for issuing it reads: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse). The landlord tried to serve the tenant but was not successful in finding the tenant home, so left the document with a neighbour to serve. The neighbour served the tenant personally on June 16, 2016 and the tenant notified the landlord that day by email that she had received it.

The landlord further testified that her sister lives in China and is expecting a baby and will be occupying the rental unit for 6 months during maternity leave, after which the rental unit will continue to be occupied by the family, which was the intention when the home was purchased.

The landlord also testified that the tenant told the landlord she didn't want to move out and offered a rent increase to \$1,050.00 per month, and then said she didn't want to pay it.

**The tenant** testified that the parties had a conversation about a rent increase. The tenant went to the landlord's residence, who had a new lease ready for the tenant to sign, however, the tenant stated that 3 months notice was required to increase the rent. The landlord responded that it didn't apply to her and that the lease had expired. The landlord was upset that the tenant wanted 3 months notice. The landlord wanted the increase effective immediately. The tenant refused and then the landlord didn't want to communicate with the tenant at all, and wanted the tenant out of the house. The landlord took the contract away, said she was giving the tenant 30 days notice to vacate. She also told the tenant that because the contract doesn't apply to her, in her opinion it was a dead contract because there is a new owner.

The tenant also testified that the rental home consists of 2 floors above the tenant's basement suite, and no one lives there because the owners live in China.

The tenant has also referred to a string of emails provided by the landlords written in a foreign language as well as a sworn interpretation. The string is purported to be emails between the landlord (father) and the landlord (daughter who attended this hearing). It states, in part, that "...The purpose for us to buy the house is for our vacation and retirement," and, "...Please take back our house. I will talk to your sister about this and let her prepare for the maternity leave holiday."

The tenant submits that the landlords asked for more rent and to sign a new contract to that effect and when the tenant refused, the landlords issued the 2 Month Notice to End the Tenancy for Landlord's Use of Property.

### Analysis

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 issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. Further, where a 2 Month Notice to End Tenancy for Landlord's Use of Property is given, the landlord must be able to establish good faith intent to use the rental unit for the purpose contained in the notice.

There is no dispute that the upper 2 levels of the rental home are vacant, and I find that the landlord's testimony that her sister will be moving in for 6 months to be very convenient testimony.

There is also no dispute that the parties talked about a rent increase, and I am satisfied that when the tenant refused to pay the increase without 3 months notice, the landlord responded by giving the notice.

I am not satisfied that the landlord has established any good faith intent for her sister (the other landlord's daughter) to occupy the rental unit. The person will not be moving to Canada, and considering that the upper 2 levels are vacant, and given the agreement to increase rent but with 3 months notice as required by law, and considering the evidence that the landlords intend to use the rental unit for vacation and retirement, I am not satisfied that the landlords have established good faith intent. The notice to end the tenancy is cancelled and the tenancy continues.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

### Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 6, 2016 is hereby cancelled and the tenancy continues on a month-to-month basis.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I

order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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 28, 2016

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Residential Tenancy Branch