



# 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 an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Are the Tenants entitled to its cancellation?

Are the Tenants entitled to recovery of the filing fee?

### Background and Evidence

The Landlord states that he has no copy of the tenancy agreement and does not know the terms of the agreement.

The Tenants provide a copy of the tenancy agreement signed March 11, 2015 that indicates that the tenancy started on March 8, 2015, rent of \$750.00 is payable on the first day of each month and that the landlord collected \$100.00 as a security deposit and \$93.55 as a pet deposit.

The Landlord states that when he purchased the unit on June 5, 2015 that he had the intention to move into the unit and that an agreement was made with the previous landlord that the existing tenants in the upper and basement unit would move out after 3 months.

The Landlord confirms that he gave the Tenants a two month notice to end tenancy for landlord's use (the "Notice") but cannot recall when he sent it by courier to them. The Landlord confirms that the reason indicated on the Notice is that all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this notice because the purchaser of a close family member intends in good faith to occupy the rental unit. The Landlord states that the unit is not for sale and that he does not intend to sell the unit. The Landlord states that the upper tenants will be moving out at the end of the month however the Landlord intends to rent that unit out and live in the basement unit.

The Tenant states that they received the Notice in regular mail on June 29, 2016. The Tenant states that the Landlord does not intend to move into the unit but only wants to end the tenancy in order to negotiate a new tenancy at a higher rental rate. The Tenant states that prior to the issuance of the Notice the Landlord offered the Tenants a new tenancy agreement for a one year term with rent of \$800.00 and including internet. The Tenant states that they signed this agreement but that the Landlord had not signed the agreement and that the Tenants have never received a copy of that agreement. The Tenant states that the Landlord retracted the agreement and served the Notice. The Tenant states that when the Notice was received the Tenants were told that the Landlords wanted a tenancy agreement but that they wanted better terms. The Tenant provides a copy of an email dated July 6, 2016 from one of the Landlords indicated on the Notice that states "as per our conversation I said after I issue the notice to end tenancy I will contact you to discuss a new lease agreement. . . I will be in contact soon." The Tenant states that the email address for this email belongs to the owner, attending this hearing and identified as Landlord PB.

The Landlord states that there was no tenancy agreement offered to the Tenants and that the Tenants are lying. The Landlord states that the person who sent the email is not the owner but was helping the Landlord. The Landlord states that the other two persons named as landlords on the Notice are his girlfriend and a friend. The Landlord confirms that he signed the Notice indicating that the other two persons are landlords. The Landlord states that it was always his intention to move into the basement unit and that he made a mistake on the Notice.

### Analysis

Section 6 of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. Given the copy of the signed tenancy agreement that started in 2015 provided by the Tenants and given the lack of a copy of any other tenancy agreement signed by the Tenants I find that the Parties are operating under the tenancy agreement signed in 2015.

Section 49 of the Act provides that a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
  - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Based on the undisputed evidence that the unit is not being sold by the Landlord I find that the reason indicated on the Notice is not valid.

Section 49 of the Act also provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Accepting that the Landlord simply made an error in selecting the reason for the Notice and accepting that the Landlord meant to check the above reason, then based on the Tenants' persuasive evidence supported by the email dated July 6, 2016 that I take to have been sent on the owner's behalf, I find that the Landlord intended to negotiate a tenancy agreement with the Tenants for an ongoing tenancy after the effective date of the Notice. As such I find that the Tenants have substantiated on a balance of probabilities that the Landlord does not have the good faith intention to move into the basement unit. As a result I find that this reason for the Notice is not valid either. As such the Tenants are entitled to a cancellation of the Notice. The tenancy continues.

The Tenants are entitled to recovery of the \$100.00 filing fee and the Tenants may deduct this amount from future rent payable in full satisfaction of the claim for the filing fee.

### Conclusion

The Notice is cancelled and of no effect. I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: August 18, 2016

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Residential Tenancy Branch