



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPL, O, FF  
Tenants: MT, CNL, O, OLC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession. The tenants sought more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord; her assistant; and both tenants.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for landlord's use of the property and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled more time to submit their Application for Dispute Resolution to seek to cancel a notice to end tenancy; to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 66, 67, and 72 of the *Act*.

### Background and Evidence

The parties agreed the tenancy began in September 2013 as a month to month tenancy for the current monthly rent of \$1,200.00 due on the 1<sup>st</sup> of each month with a security deposit of \$600.00 paid.

Both parties submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on May 19, 2016 with an effective vacancy date of July 31, 2016 citing the rental unit will be occupied by the landlord.

The landlord testified she served the Notice to the tenants on June 29, 2016 by registered mail. The tenants confirmed they received the Notice on July 5, 2016 and submitted their Application for Dispute Resolution on July 6, 2016.

The landlord submitted that she intends to fix up her current house to put it on the market for sale. She stated she plans to put it on the market in September 2016. The landlord submits that as a result she intends to move into the rental unit.

She stated that her husband had purchased the rental unit for her to live in and that she would have to move into it sometime in the future.

In a written submission to this hearing the landlord wrote: "The reason why I am asking my tenant move out is that I, landlord, move in the suite. This is not really want but there is no other way." [Reproduced as written]

The tenants submit that the landlord had told them that she had intended to increase their rent by \$200.00 per month and when they told her that they would not accept this increase she issued them two separate 2 Month Notices. The tenants stated one of the Notices stated that the reason given was that the landlord was going to occupy the rental unit and the other was that the landlord intended to complete renovations.

These two Notices were the subject of a hearing held on May 13, 2016. The tenants submitted a copy of the resulting decision from that hearing. In the decision, also dated May 13, 2016, the arbitrator wrote, in part, "The landlord testified that she wants to end the tenancy because the tenants' rent is too low. She testified that she wants to raise the rent by at least \$200.00 per month."

The decision also recorded an agreement between the parties that the landlord would withdraw both of those Notices and issue a proper rent increase notice.

The tenants also raised the question of the landlord's intent for the rental unit in 6 months' time because she has submitted documentation from Canada Post asking for a temporary redirection of mail and from BC Hydro for the account to be in her name for a temporary period.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(2) stipulates that the landlord may end the tenancy for such a purpose by giving a notice to end the tenancy effective on a date that must be (a) not earlier than 2 months after the date the tenant receives the notice; (b) the day before the day in the month, that rent is payable under the tenancy agreement; and (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Section 49(8) of the *Act* stipulates that a tenant may dispute a notice issued under Section 49 by submitting an Application for Dispute Resolution within 15 days of receiving the notice. Section 49(9) states that if the tenant does not submit an Application for Dispute Resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

From the testimony of both parties I find the tenants received the landlord's 2 Month Notice to End Tenancy for Use of the Property on July 5, 2016 and as such they had until July 20, 2016 to file their Application to dispute the Notice. I accept the tenants submitted their Application for Dispute Resolution on July 6, 2016. Therefore, I find the tenants have submitted within the required timeframe. I find their request for additional time is moot.

Residential Tenancy Policy Guideline #2 defines "good faith" as 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.

The Guideline goes on to say that 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 the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

From the testimony of both parties I am not satisfied that the landlord's intent to end this tenancy is not based on her desire to move into the rental unit. Specifically, from the landlord's written submission that her moving into the suite is not what she really wants; the undisputed testimony of the tenants that the landlord has been attempting to increase the rent by 16.6% when the current allowable increase is 2.9%; the temporary redirection of the landlord's mail and the temporary hydro account; the landlord's comments about wanting to move into the unit "at some point"; and the inconsistent reasons given in the three Notices that have been issued within the last several months.

Rather, I find the landlord has an ulterior motive to end the tenancy resulting from the tenant's disagreement with the landlord's desire to increase the rent by an amount over the allowable rate prescribed by the *Act*.

## Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety and without leave to reapply.

I order the 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on May 19, 2016 is cancelled and the tenancy remains in full force and effect.

I also caution the landlord continued issuance of notices to end tenancy may, at some point, be considered harassment for which the tenants may pursue compensation.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the tenants for this application. I order the tenants may deduct this amount from their next rent payment, pursuant to Section 72(2)(a).

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 10, 2016

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Residential Tenancy Branch

