



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LTE VENTURES INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNL, FF

### **Introduction**

This hearing was convened in response to an application by the tenant under the *Residential Tenancy Act* (the Act) to cancel or set aside a 2 Month Notice to End Tenancy for Landlord's Use as well as to recover the filing fee.

Both parties appeared and had opportunity to resolve the dispute, to be heard, present evidence and make submissions. The landlord entity was represented by their property manager.

The style of cause was amended to reflect the proper spelling of the dispute address.

The landlord filed late document evidence, however the tenant acknowledged receiving it and was able to respond to it, and therefore the landlord's evidence was admitted. The landlord acknowledged receiving the evidence of the tenant. Only the evidence relevant to the relevant issues in this matter has been described in this Decision. Of primary relevance in this matter is the tenant's dispute of the landlord's good faith intentions respecting the 2 Month Notice to End for Landlord's Use.

### **Issue(s) to be Decided**

Is the 2 Month Notice to End Tenancy for Landlord's Use dated July 08, 2016 valid?  
Is the tenant entitled to recover their filing fee?

### **Background and Evidence**

The tenancy began in 1999. There is a written tenancy agreement. The payable monthly rent is \$815.00 per month. The rental unit is a 1 bedroom apartment. Neither party provided the Section 49 Notice to End (2 Month Notice) in dispute. However, both parties provided undisputed and complimenting testimony that on July 13, 2016 the tenant was personally given a 2 Month Notice in the approved form dated July 08, 2016 and provided as prescribed by Section 52 of the Act, with an effective date of September 30, 2016. The reason stated on the Notice is the provision prescribed by Section 49(6)(e) of the Act;

**49(6)** A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

**(e)** convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

The tenant disputes that the landlord will do as they stated on the Notice to End. The tenant claims the intent of the landlord is to renovate the unit and re-rent it at a higher rent as they claim was done previously by the landlord. The landlord testified that they intend to use the rental unit to create a “presence” in the building, or an office for management, or possible residence for an on-site caretaker or a resident manager. The landlord testified they do not have a resident staff designate to date but will look for such an individual. The landlord testified they seek to take on the tenant’s suite for management’s use to address the apparent vandalism and associated complaints in respect to the laundry room of the residential complex. The landlord provided document evidence of e-mail complaints, from other residents than the tenant, as well as images respecting ongoing disturbances to the laundry room and reported vandalism to the laundry of residents. The landlord testified they have attempted to resolve the laundry disturbance to no avail, and that they will destine the tenant’s rental unit to aid in resolving the laundry room problem. The landlord explained that they are the property’s manager and that they intend to use the rental unit in dispute so as to create a presence in the building and resolve the laundry room vandalism.

The tenant provided undisputed evidence that an adjacent 2 bedroom unit in the complex recently received a 2 Month Notice for the same reason of Section (49)(6)(e) and the unit was vacated January 31, 2016 and has not been re-occupied or used by the landlord. The landlord testified that the 2 bedroom unit remains vacant and is now under renovation and is available for rent. The landlord testified the unit was never occupied by a resident manager or caretaker although they personally occasionally used it and also stayed overnight in that unit until they no longer required it. The landlord testified that the 2 bedroom unit is “too big” and “not cost effective” for landlord’s use and that the smaller unit in dispute is the, “most cost effective” for the landlord’s use. The landlord also testified that a different unit was vacated 4 years ago pursuant to a 2 Month Notice for the same reason of Section (49)(6)(e), and that for a short period the unit served its purpose for the landlord and then renovated and re-rented. The landlord explained their intention is to now use the tenant’s unit to resolve the laundry room matter for the benefit of the remaining residents. The landlord did not testify as to it’s continued role.

The landlord effectively stated that the conversion of the rental unit for their use is in good faith. The tenant effectively disputed the veracity of the landlord’s testimony , insisting the landlord’s version indicates they have an ulterior motive.

### **Analysis**

Despite the absence of a copy of the original Notice to End I find that the tenant was provided a 2 Month Notice in the approved form dated July 08, 2016 in accordance with Section 52 of the Act, on July 13, 2016, with an effective date of September 30, 2016 and that the reason stated on the Notice is the provision afforded by Section 49(6)(e) of the Act.

**Section 49(6)(e)** of the Act allows a landlord to end a tenancy if they have all the necessary permits and approvals required by law, and they intend, in good faith, to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. In this matter, the landlord did not address any of the possible or

potential legal requirements for the rental unit conversion. None the less, the landlords in attendance are themselves the manager and they claim they will personally use the rental unit or that it may accommodate a staff designate: all with the goal of providing an on-site layer of management for problems, but moreover the current problem respecting the laundry room.

*Residential Tenancy Policy Guideline #2* **Good Faith Requirement when Ending a Tenancy**, in relevant part states as follows;

*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.*

It must be noted that in this type of matter it is not enough for the tenant or the landlord to simply insist on their version of facts as the truth. I accept the landlord's evidence of how they intend to use the rental unit by them or their staff designates to address a current problem. I accept the landlord has explained their plan to create a presence and that the rental unit in dispute is the cost effective unit or option for that plan. However, moreover I find the evidence that the landlord recently ended the tenancy of a different rental unit by way of a 2 Month Notice for the same reason at hand, difficult to reconcile with the testimony that the 2 bedroom unit previously repossessed for landlord use was deemed by the landlord as inappropriate as it was too big and not cost effective for use by the landlord; therefore, instead the landlord now seeks to end another tenancy which they claim is more appropriate. I find it begs the question as to why then they ended the 2 bedroom unit tenancy if it was not appropriate to do so. In contrast I find the landlord's evidence in respect to the rental unit in dispute does not make sense and obscures what good faith intention they claim having. I am not satisfied the landlord has proven that they now, in good faith, truly intend to do what they said on the current 2 Month Notice to End. I am not satisfied the landlord has proven they do not have an ulterior motive for ending the tenancy.

I find the landlord has not met their burden. Accordingly I find the 2 Month Notice to End Tenancy for Landlord's Use in this matter is not valid. As a result, the tenant's application is granted. The landlord's 2 Month Notice to end dated July 08, 2016 is **cancelled** and is of no effect.

As the tenant was successful in their application they are entitled to recover their filing fee.

### **Conclusion**

**I Order** the 2 Month Notice to End Tenancy for Landlord's Use dated July 08, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

**I Order** the tenant may deduct \$100.00 from the next rent payment due to the landlord, in satisfaction of their filing fee.

**This Decision is final and binding on both parties.**

*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: September 12, 2016

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Residential Tenancy Branch