



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, FF  
                             CNL, OLC

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession for landlord's use of property and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end the tenancy for landlord's use of property and for an order that the landlords comply with the *Act*, regulation or tenancy agreement.

One of the landlords attended the hearing with legal counsel who acted as agent for the landlords. The tenant also attended with a support person, who did not testify or take part in the hearing. The landlord's agent and the tenant each gave affirmed testimony and were given the opportunity to question each other.

The landlord's agent advised that additional evidentiary material was provided to the Residential Tenancy Branch today, however a copy was not provided to the tenant for confidentiality reasons, and I have not received it. I find that it would be prejudicial to the tenant for me to consider evidence received after the hearing has commenced and that the tenant is not privy to. Therefore, none of that evidence is considered in this Decision.

No other issues with respect to exchanging evidence were raised, and all other evidence has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?

- Has the tenant established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

**The landlord's agent** testified that the tenancy began on June 15, 2014 on a month-to-month basis, and the parties subsequently entered into a fixed-term written agreement. Upon the expiry of the fixed term the parties entered into another written tenancy agreement for another fixed term, and the tenant still resides in the rental unit. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlords, and no pet damage deposit was collected.

A copy of a tenancy agreement dated August 30, 2014 has been provided which specifies a fixed term from September 1, 2014 to August 31, 2015 thereafter reverting to a month-to-month tenancy, and rent in the amount of \$900.00 per month payable on the 1<sup>st</sup> day of each month. Another tenancy agreement has also been provided signed by the landlords on July 31, 2015 and by the tenant on August 27, 2015, and specifies a fixed term from September 1, 2015 to August 31, 2016, for rent in the amount of \$925.00 payable on the 1<sup>st</sup> day of each month. It also states that at the end of the fixed term the tenancy may continue on a month-to-month basis or another fixed length of time.

On July 26, 2016 the landlord personally served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has also been provided. It is dated July 26, 2016 and contains an effective date of vacancy of September 30, 2016. The reason for issuing it states: "All of 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 or a close family member intends in good faith to occupy the rental unit." The landlord's agent testified that the conditions and subjects were removed after the Offer to Purchase on July 15, 2016, and all subjects and conditions were removed prior to July 26, 2016 when the tenant was served with the notice to end the tenancy. The closing date for the sale was October 3, 2016 and the landlords and the purchaser agreed to vacant possession on October 4, 2016. The landlords were told by the realtor that the purchaser intends to occupy it, however the landlord's agent testified that in documentation that the landlord's counsel sent to the Residential Tenancy Branch today, it does not contain anything in writing by the purchaser indicating that the purchaser intends to occupy the rental unit.

The landlord's agent further submits that the tenant did not file the Tenant's Application for Dispute Resolution within 15 days as required under the *Act*. The notice to end the tenancy was served on July 26, 2016 and the tenant's evidentiary material states that it was received on July 27, 2016, however the copy of the application for dispute resolution served on the landlords by the tenant is dated August 15, 2016, well outside the 15 day requirement regardless of which of the 2 dates the tenant was served.

The tenant's rent cheque for the month of September, 2016 has been returned to the tenant as compensation required by the *Residential Tenancy Act*; no rent has been accepted for September or October, 2016.

The landlords seek an Order of Possession on 2 days notice to the tenant since the effective date of vacancy has passed, and a monetary order for recovery of the \$100.00 filing fee.

**The tenant** testified that the parties had negotiated several tenancy agreements during the course of the tenancy, and the tenant was not always provided with the newest agreements within 21 days as required by the *Act*. The parties negotiated the latest written tenancy agreement by email, and the tenant has provided copies of other emails which the tenant testified were the contents of a new negotiated fixed term to expire on June 1, 2017. This is the fourth time. The *Residential Tenancy Act* states that agreements are anything, oral or implied regarding possession of the rental unit.

The tenant further testified that she received the 2 Month Notice to End Tenancy for Landlord's Use of Property on July 27, 2016 and emailed the realtor the same day. The tenant and the realtor had several conversations, and the realtor confirmed that he did not include the fixed term tenancy agreement in the sale, and that the buyers were not aware at the time that one existed. The realtor said that he didn't know what to do.

The tenant has not been provided with any documentation regarding the purchase of the rental unit and questions the good faith intent of the landlords, and has attempted 9 times without success to talk to the purchasers.

The tenant also testified that the rental unit is a basement suite, and the landlord's son lived in the upper level but has now vacated and cut off the cable and internet, both of which are included in the tenancy. The tenant has also been notified that water and sewer will be cut off as of October 11, 2016.

The tenant further testified that she filed the Tenant's Application for Dispute Resolution on August 5, 2016 and subsequently received a notice from the Residential Tenancy

Branch requesting that the tenant name each landlord separately, which the tenant complied with.

The tenant seeks an order cancelling the notice to end the tenancy and for an order that the landlords comply with the *Act* by providing the tenant with a copy of the newest negotiated tenancy agreement and to comply with that agreement, and to provide the services agreed to in the tenancy agreement.

### Analysis

The *Residential Tenancy Act* requires a tenant to dispute a 2 Month Notice to End Tenancy for Landlord's Use of Property within 15 days of receipt. In this case, the parties disagree what date it was served, however it was the 26<sup>th</sup> or 27<sup>th</sup> of July, 2016. Counsel for the landlords submitted that the copy of the tenant's application that they've received is dated August 15, 2016, and whether served on the 26<sup>th</sup> or 27<sup>th</sup> of July, that would be outside the 15 day rule. However, the tenant testified that the application was filed on August 5, 2016 and the tenant received a notice from the Residential Tenancy Branch to make corrections. The application before me is dated August 5, 2016, which is within the 15 day time limit regardless of whether or not the notice to end the tenancy was served on the 26<sup>th</sup> or the 27<sup>th</sup> of July, 2016. The *Act* requires the tenant to file the application, and I find that the tenant did so on August 5, 2016. Therefore, I find that the tenant has filed the application within the time prescribed.

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 given in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the 2 Month Notice to End Tenancy for Landlord's Use of Property and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it and the good faith intent of the landlords is in dispute.

The landlord's agent testified that a request from the purchaser exists, but there is no evidence to support the requirement that the purchaser has asked in writing that the landlords give the notice to end the tenancy because the purchaser or a close family member intends to occupy it. It is not sufficient for the landlord and the purchaser to agree to vacant possession by a specific date. The request must be from the purchaser in writing and must state that the request is made because the purchaser intends in good faith to occupy the rental unit. That written request does not exist, and I find that the landlords have failed to establish that the notice was issued in accordance with the *Act*.

With respect to the tenant's application for an order that the landlords comply with the *Residential Tenancy Act* by providing the tenant with a new fixed-term tenancy agreement and abiding by that agreement, I have read the emails provided by the tenant, and it's clear that the parties discussed a renewal of a fixed term in 2015 by email, and a new tenancy agreement was subsequently signed for a fixed term to expire August 31, 2016. The parties also discussed another fixed term by emails to expire June 1, 2017, but no tenancy agreement was prepared or signed by the parties, and then the landlords sold the rental unit. The tenant's position is that there is an implied agreement for a tenancy to expire on June 1, 2017, and referred to the definition of a tenancy agreement in the *Residential Tenancy Act*:

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit

The landlords' position is that since the parties never signed that agreement, it was never agreed to.

I am satisfied that the new tenancy agreement is certainly implied in the emails, however I am not satisfied that either party was bound by those emails with respect to the date of the end of the fixed term and could easily have been changed to any other date or to a month-to-month tenancy when the tenancy agreement was actually signed. There are no signatures agreeing to those terms, and sending a note in a text or an email does not suffice for the purposes of the *Act*. In the circumstances, I find that the tenancy agreement signed by the landlords on July 31, 2015 and by the tenant on August 27, 2015 reverts to a month-to-month tenancy after August 31, 2016, and will continue on a month-to-month basis until ended in accordance with the *Act*.

I further order the landlords to reinstate the cable and internet and ensure that other services included in the rent are provided.

Since the landlords have not been successful with the application, the landlords are not entitled to recovery of the filing fee.

### Conclusion

For the reasons set out above, the landlords' application is hereby dismissed in its entirety.

The 2 Month Notice to End Tenancy for Landlord's Use of Property dated July 26, 2016 is hereby cancelled and the tenancy continues until ended in accordance with the *Residential Tenancy Act*.

I hereby order the landlords to comply with the tenancy agreement signed by the landlords on July 31, 2015 and by the tenant on August 27, 2015 which reverts to a month-to-month tenancy after August 31, 2016.

I further order the landlords to comply with the *Act* by providing the services and facilities agreed to in the tenancy agreement.

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: October 06, 2016

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Residential Tenancy Branch

