



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, RP, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated October 29, 2016 and setting the end of tenancy for December 31, 2016.
- b. A monetary order in the sum of \$1450
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was personally served on the Tenant on October 29, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served the landlord on November 9, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated October 29, 2016?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on February 1, 2006. The present rent is \$881.50 payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$325 prior to the start of the tenancy.

The rental property is a duplex. The present landlord purchased the property in the summer of 2016.

The landlord gave the following testimony:

- His numbered company purchased the property in the summer of 2016.
- The rental property is a duplex. In the late summer he rented the other side of the duplex to a single mother for \$1400 per month.
- He wants to move his mother into the rental unit.
- His mother suffers from arthritis and is scheduled for ankle and knee surgery in the early part of 2017.
- The rental unit is attractive to his mother because the kitchen is on the bottom floor.
- His mother presently resides and owns another property. However, the kitchen is on the second floor and she has difficulty going up and down the stairs especially with groceries.
- The rental property is a short distance away from where his mother works and it will give her access to walk from home to work.
- On questioning he acknowledged the numbered company is the owner of the rental property. However, he owns all of the shares in the numbered company.
- The landlord's mother testified that she intends to move into the rental unit and she confirmed her health issues.

The tenant submits the landlord is not acting in good faith based on the following evidence:

- This is the third eviction notice which she has received. The first notice stated the rental unit was need for renovations. The second notice alleged it was for family use. The landlord failed to attend the hearing and the arbitrator set aside both Notices. The landlord testified he was attempting to connect to the hearing but was not able to connect for technical reasons. However, his application for review was dismissed because he was not able to provide sufficient evidence to prove the problems he was having connecting.
- The other side of the duplex was vacant and the landlord's mother could have moved into that unit. However, the landlord chose to rent it to another tenant with a rent of \$1400.

- There are stairs in both units. The mother must go up and down to the bathroom and to the bedroom.
- The landlord's mother owns her own house.
- The landlord has not been diligent in fixing the back door after he was ordered to do so in the previous arbitration.
- The tenant seeks a monetary order of 25% of the rent totaling \$1450 based on the following for breach of the covenant of quiet enjoyment:
  - The landlord has served three Notices to End Tenancy.
  - The landlord has treated her improperly and in an angry way.
  - The landlord failed to properly fix the back door.

Grounds for Termination:

The Notice to End Tenancy relies on section 49(3) of the Residential Tenancy Act. That section provides as follows:

49(3) 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.

Analysis:

Policy Guideline #2 includes the following:

**GOOD FAITH REQUIREMENT**

Good faith is 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.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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 that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

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.

After hearing the disputed evidence of the parties I determined that the representative of the landlord has an honest intention to move his mother into the rental unit and that there is no malice or ulterior motive. I accept the testimony of the mother of the landlord's representative's about her upcoming surgeries and the need to have the kitchen on the bottom floor. I do not accept the submissions of the tenant. The fact there was another unit available that was rented out for September 1, 2016 at a higher rent does not prove an ulterior motive. Also, the fact that the two previous Notices were cancelled is not determinative. I accept the testimony of the landlord that he attempted to contact the conference call but was not able to do so for technical reasons.

However, in my view the Notice to End Tenancy is not valid on its face. The landlord has the burden of proof to establish sufficient grounds set out in the Notice. The Notice alleges the landlord or close family member intends in good faith to occupy the rental unit. The landlord is a corporation. A corporation does not have a mother or close family member.

The landlord may have grounds under section 49(4) which provides as follows:

49(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

The definition section in section 49 provides as follows:

**"family corporation"** means a corporation in which all the voting shares are owned by

(a) one individual, or

(b) one individual plus one or more of that individual's brother, sister or close family members;

The termination of a tenancy is a significant event and must be properly done. The Notice to End Tenancy must properly set out the grounds and if the landlord intends to rely on the family corporation provisions the landlord must prove he fits this definition.

As a result I ordered that the 2 month Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

The tenant dismissed the tenant's claim for compensation in the sum of \$1450 being 25% of the rent based on breach of the covenant of quiet enjoyment for the following reasons:

- I determined the tenant failed to prove this claim. I do not accept the submission of the tenant that in this situation the service of three Notices to End Tenancy amounts to the breach of the covenant of quiet enjoyment.
- The Act gives the landlord the legal right to end the tenancy provided the landlord has grounds and he follows the procedures set out in the Act and Regulations. This is not a breach of the covenant of quiet enjoyment.
- I determined the representative of the landlord acted in good faith. The Notice was set aside because the landlord failed to appreciate that the grounds relied on do not apply where the landlord is a corporation.
- The tenant failed to present sufficient proof of mistreatment. The provision in an e-mail that the tenant could leave without giving notice does not amount to a breach of the covenant of quiet enjoyment as it is offering the Tenant a benefit.

However, I find the landlord did not respond to the order to fix the door in a prompt manner. The arbitrator's order was issued on October 18, 2016. The landlord would have received it within 10 days. The door was not repaired until early December. The tenant failed to prove additional hydro expenses. I determined the tenant is entitled to compensation in the sum of \$50.

Conclusion

I ordered that the 2 month Notice to End Tenancy be cancelled. I ordered that the landlord pay to the Tenant the sum of \$50 plus \$100 for the cost of the filing fee for a total of \$150 such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: December 23, 2016

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Residential Tenancy Branch