



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Century 21 Creekside Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, MNDC, FF

### Introduction

This was an application by a tenant to cancel two separate landlord use two month Notices to End the Tenancy dated November 30, 2016 with an effective date of January 31, 2017 and December 15, 2016 with an effective date of February 28, 2017. The tenants also sought a monetary order for compensation for breach of their covenant of quiet enjoyment. Both parties attended the conference call hearing.

### Issue(s) to be Decided

Is the landlord entitled to an Order for possession or will the tenancy continue?

### Preliminary Matters

The tenants challenged a Notice to End the Tenancy for Landlord Use dated November 30, 2016 and were subsequently served with another Notice alleging the identical grounds but dated December 15, 2016 with an effective date of February 28, 2017. With the consent of the parties I have amended the tenants' application to include a dispute of the second notice as well as the first.

In the course of this proceeding and upon review of the tenants' application, I have determined that I will not deal with all the dispute issues the tenants have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenants' request to set aside, or cancel the landlord's Notices to End Tenancy for Landlord Use, and I dismiss the balance of the tenants' claims with liberty to re-apply.

### Background and Evidence

Service of the Application was admitted by the respondent. The tenants admitted receiving both the Notices to End the Tenancy.

KW the owner's/landlord's agent a realtor, testified that the house containing the unit was sold with a possession date of February 1, 2017 and that the buyers asked the landlord to give the tenants the notices. She did not tender in evidence a copy of the contract for purchase and sale but informed me at the hearing that apart from requiring vacant possession there was not any specific clause in the contract stating that the buyer or close family member of the purchaser intended to occupy the unit. KW relied upon an email dated November 30, 2016 stating:

Attached is a notice to vacate the rental home on Uplands Drive. CV, the buyer, has asked the current owners to process this notice. As the owners (sic) agent, I have signed it on their behalf.

KW testified that the new owners planned to develop the property.

The tenants testified that the tenancy began about nine and a half years ago. The current rent is \$ 1,200.00 per month and that they paid \$ 1,200.00 in pet and security deposits at the beginning of the tenancy. The tenants challenged the Notices and testified that they intended to continue residing in the unit.

### Analysis

I am asked to decide whether the Notices should be aside and the tenancy continue, or whether the Notices are upheld and the tenancy end on the effective dates of the Notices. The Notices are given under section 49(5) of the Residential Tenancy Act, which states:

- 49 (5) 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**;
- (my emphasis added)

Policy Guideline 2 states:

## 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 o 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. (my emphasis added)

It is the landlord who has the burden of proof on the balance of probabilities to establish that all the conditions on which the sale depends have been satisfied, and the purchaser requested the landlord, in writing, to give notice to end the tenancy *because the purchaser an individual, or a close family member of the purchaser, intends in good faith to occupy the rental unit*. This onus must be satisfied strictly where the landlord seeks to end a tenancy. Here the landlord had not produced evidence of a written contract of purchase and sale, and testified that the contract is silent in any event as to the requirement that the landlord must give notice to the tenants because the purchaser or close family member intends to occupy the unit. Furthermore the respondent KW admitted that the purchaser actually plans to develop the unit which is a completely different reason than stated on the grounds checked off on the notices to End the Tenancy aforementioned.

Accordingly I have allowed the tenants application and have cancelled both the Notices to End the Tenancy aforementioned. The tenancy will continue. The tenants are entitled to recover their filing fee of \$ 100.00. I order that they are permitted to deduct the sum of \$ 100.00 from their next rental payment.

## Conclusion

I have cancelled the Notices to End the Tenancy dated November 30, 2016 with an effective date of January 31, 2017 and the Notice dated December 15, 2016 with an effective date of February 28, 2017. I Order that the tenancy continue. I have dismissed the balance of the tenants' other applications with leave to reapply. I have awarded the tenants recovery of their filing fee of \$ 100.00 and order that they are permitted to deduct that sum from their next rental payment.

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: January 16, 2017

---

Residential Tenancy Branch