



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, CNQ

### Introduction

This hearing was set to deal with the tenants' application for orders setting aside a 2 Month Notice to End Tenancy for Landlord's Use and a Notice to End Tenancy because Tenant does Not Qualify for Subsidized Housing. The tenants admitted at the outset that the only issue in the proceeding is the 2 Month Notice to End Tenancy for Landlord's Use.

Both parties appeared at the hearing. The landlord had served and filed some written evidence, which the tenants' admitted receiving, but which was not on the file. I asked the landlord to re-file that document as soon as possible after the hearing. The tenant's advocate asked for leave to submit the copy of what they had been served so that I could ascertain that the documents were the same. I gave the tenants leave to do so. There was some difficulty with the filing so I did not receive the documents until January 18, 2017.

No other issues regarding the exchange of evidence were identified.

### Issue(s) to be Decided

Is the 2 Month Notice to End Tenancy for Landlord's Use dated November 28, 2016 valid?

### Background and Evidence

This tenancy commenced September 1, 2014. The monthly rent, which is due on the first day of the month, is \$950.00 and has remained unchanged throughout the tenancy. The rental unit is a two bedroom apartment located in a six unit building.

The landlord bought this building effective September 23, 2016. He described the purchase as a difficult and complex process. Not only was it the largest purchase of his career but partway through the process the seller got sick, and then subsequently died.

As a result he went from dealing with the seller; to dealing with her power of attorney; and then with her estate.

Other complications arose from the seller's illness and death. Her development plans for the building next door, which she also owned, ended. The landlord ended up buying that building, something that does not appear to have part of the original plans. He also had to bring in additional partners.

Part of the purchase agreement was the landlord's request for vacant possession of unit #2. This is a one bedroom unit. The tenant of this unit was served with a 2 Month Notice to End Tenancy for Landlord's Use by the seller's power of attorney on August 28, 2016. This tenant vacated the unit on October 31.

Until recently the landlord has lived in another community with his family. His family consists of his girlfriend and her son. The landlord testified that it was always their plan that he and his family would relocate to this community, however, the exact timing of that relocation was uncertain. His girlfriend is employed and arranging employment for her in a new city was one of the complications in their family's move to this community.

The landlord testified that he asked for vacant possession for unit #2 because it was the least disruptive way to get into the building. He knew that the one bedroom unit was too small to accommodate his family but he did not expect them to be moving to the community immediately.

The landlord took possession of the building on September 26, 2016. He talked to all the tenants about the facts that the previous landlord had not consistently raised the rents; that she had a much smaller mortgage than he and therefore a lower overhead; and that to be viable the rents had to be harmonized with market rents.

When the landlord took possession of the building unit #1 was vacant as it had been occupied by the previous landlord. The landlord testified that this unit was not suitable for his family because the second bedroom was very small. He rented this unit starting October 1 for \$1700.00 per month.

The tenants in unit #6 moved out on September 30. This was a two bedroom unit in the basement. The landlord testified that this unit was not suitable for him and his family because it was below grade. The landlord renovated the unit and rented in November for \$1500.00 per month.

Meanwhile the landlord renovated unit #2. The landlord testified that he stayed in the unit off and on while it was being renovated. He rented it starting December 1 for \$1600.00 per month.

In November the landlord concluded new tenancy agreements with the residents of units #3 and 5. Both agreements provided for higher rents. The landlord testified that both units are two bedroom units. The major difference between these units and unit #4 is that they faced the street.

This left unit #4, which is the subject of this application. The landlord and the tenants had extensive discussions throughout the fall about a new tenancy agreement at a higher rate of rent. Ultimately, the parties were not able to come to an agreement. The negotiations ended on November 25.

On November 28 the landlord signed a 2 Month Notice to End Tenancy for Landlord's Use stating that the rental unit would be occupied by him or a close family member. The notice was served on the tenants on November 29.

At the beginning of his testimony the landlord testified that it was always his intention to live in this unit; the bedrooms in the unit are larger and more equal in size than all the other units, and it is on the quiet side of the building. At the end of his testimony the landlord testified that he and his family had talked about renting a three bedroom unit from friends but that deal fell apart in November, which left them scrambling for a place to live. It was also sometime in November that his girlfriend was able to make the necessary arrangements with her employer – more remote work – that would allow her and her son to move. He said that the combination of these events led to the conclusion at the end of November that they should move into this unit.

The only written evidence filed by the landlord was a copy of his notice to end tenancy given to his current landlord. The notice is dated December 20, 2016 and is effective January 31, 2017.

The tenants testified that in the course of the negotiations the landlord did say that him moving into the unit was a possibility if the rent increase was not accepted. The landlord testified that he did not say anything to the tenants about the possibility of him moving in because his plans had not yet crystallized and he did not want to upset the tenants unnecessarily. He said that his plans did not crystallize until the end of November.

The landlord estimate the market rent for unit #4 at \$1500.00.

### Analysis

Section 49 of the *Residential Tenancy 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.

*Residential Tenancy Policy Guideline 2: Ending a Tenancy Agreement: Good Faith Requirement* 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 explain that if the 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 end the tenancy.

The history here is that the landlord started by evicting a tenant from the only one bedroom unit in the building, which he stated was too small for his family, even though a two bedroom unit was already vacant. That rental unit was not used for the purpose stated on the notice to end tenancy for at least six months, the standard set out in section 51(2). This transaction was a violation of the *Residential Tenancy Act*.

The landlord’s evidence about his relocation plans was not consistent. For example, if he always intended to move into a two bedroom unit in this building why would he seek to rent a three bedroom unit from his friend? If this was the best unit in the building and he always wanted it for he and his family, why didn’t he serve the tenants with a 2 Month Notice to End Tenancy for Landlord’s Use earlier – either as part of the purchase agreement or as soon as he took possession of the building? Why wait until after all the other units had been re-rented at higher rents and the negotiations with these tenants had broken down?

The landlord said the reason was that his family plans did not crystallize until the end of November. However, his evidence as to exactly when this happened was vague. No specific information was provided as to when the arrangements to rent from his friend

fell apart or when his girlfriend finalized her arrangements with her employer. However, the evidence is very clear that on November 21, just a week before he signed the notice to end tenancy, he was eager to conclude a new tenancy agreement with the existing tenants of unit #4.

*Residential Tenancy Policy Guideline 2* states that one of the pieces of evidence that may be presented to document a landlord's good faith is a notice to end tenancy given for another rental unit. The landlord filed such a document. While that notice is relevant evidence it is not a trump card.

Based on the totality of all the evidence and the history of all transactions in the building since the landlord decided to buy it, I find that even if the landlord does truly intent to move into this unit, he does have an ulterior motive for ending this tenancy; namely, at some point in the near future to re-rent the unit for a higher price.

The tenants' application is granted. The 2 Month Notice to End Tenancy for Landlord's Use dated November 28, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

As the tenants did not pay a fee to file this application no other order is required.

#### Conclusion

The tenants' application is granted. The 2 Month Notice to End Tenancy for Landlord's Use dated November 28, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

*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 25, 2017

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Residential Tenancy Branch