



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This was an application by the tenants to cancel a landlord use two month Notice to End the Tenancy dated November 30, 2016 with an effective date of January 31, 2017. 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

Service of the Application was admitted by the landlord's agent and service of the Notice to End the Tenancy was proven by the landlord to be on November 30, 2016. The landlord's agent advised at the hearing that he had faxed a copy of the demolition permit application to the RTB yesterday but had not given a copy to the tenant. I found that as the evidence was late and not given to the tenant I would not be considering it.

### Background and Evidence

MM the owner's/landlord's agent, testified that the landlord had applied for a demolition permit but had not yet obtained it. He also acknowledged that the tenancy agreement was a fixed term tenancy ending on March 31, 2017.

The tenant testified that the one year fixed term tenancy began on October 15, 2016. The current rent is \$ 1,800.00 per month and that they paid \$ 900.00 in security deposit at the beginning of the tenancy. The tenants challenged the Notice and testified that they intended to continue residing in the unit until the end of their term. The tenant testified that the landlord also sent them a letter dated December 1, 2016 telling them to "accept that this is a 30 day written notice to vacate the abovementioned premise by December 31, 2016." The tenant testified that both the letter and the Notice to End the Tenancy caused the tenants a lot of stress.

## 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 date of the Notice. Section 49 (2) states as follows:

49(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a **fixed term tenancy agreement**, **not earlier than the date specified as the end of the tenancy.**

The Notice is given under section 49(6) of the Residential Tenancy Act, which states:

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:

(a) demolish the rental unit

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.

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 the landlord has all the necessary permits and approvals required by law and intends to demolish the rental unit. This onus must be satisfied strictly where the landlord seeks to end a tenancy. There are two problems with the landlord's Notice, first it was given to the tenants with an effective date well before the end of their fixed term tenancy, contrary to section 49 (2). Secondly, the landlord has not yet obtained a demolition permit or the city's approval to demolish. Therefore the Notice was premature and not valid. Finally the letter dated December 1, 2016 is contrary to the prescribed method of issuing a Notice to End the Tenancy and accordingly is of no legal force or effect.

Accordingly I have allowed the tenants application and have cancelled the Notice to End the Tenancy aforementioned. The tenancy will continue. The tenants are entitled to recover their filing fee of \$ 100.00. I have granted them a monetary Order in that amount.

### Conclusion

I have cancelled the Notices to End the Tenancy dated November 30, 2016 with an effective date of January 31, 2017. I Order that the tenancy continue. I have awarded the tenants recovery of their filing fee of \$ 100.00 and granted them a monetary order in the amount of \$ 100.00. That order must be served on the landlord and can be enforced, if necessary in the Provincial (Small Claims) Court of BC.

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