



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, MNSD, OLC, RP, PSF, LRE, RR, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- a monetary order for return of all or part of the pet damage deposit or security deposit;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- an order that the landlord make repairs to the unit, site or property;
- an order that the landlord provide services or facilities required by law;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; and
- an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant attended the hearing with legal counsel, and the named landlord also attended. The landlord named in the Tenant's Application for Dispute Resolution is the property manager of the owner. The owner also attended the hearing. The tenant, the property manager and the owner each gave affirmed testimony, and the parties and the tenant's legal counsel were given the opportunity to question each other and give submissions.

During the course of the hearing it was determined that the primary application is for an order cancelling a notice to end the tenancy for landlord's use of property, and the hearing focussed on that particular application. The balance of the tenant's application is not sufficiently related to the notice to end the tenancy, and I dismiss the balance of the tenant's application with leave to reapply.

I note that some of the evidentiary material provided by the parties was not received by the Residential Tenancy Branch within the time set out in the Rules of Procedure. No issues with respect to service or delivery of documents or evidence were raised by either party, and all evidence has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established good faith intent to use the rental unit for the purpose set out in the 2 Month Notice to End Tenancy for Landlord's Use of Property?

### Background and Evidence

**The owner** testified that the landlord named in the Tenant's Application for Dispute Resolution is the owner's property manager.

This fixed term tenancy began on March 1, 2015 and expired on February 28, 2016 thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$1,200.00 per month is payable on the 1<sup>st</sup> day of each month, plus utilities, and there are no rental arrears. Prior to the beginning of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 as well as a pet damage deposit in the amount of \$600.00, both of which are still held in trust by the landlord. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided for this hearing.

The owner further testified that he instructed the property manager to serve a 2 Month Notice to End Tenancy for Landlord's Use of Property because the owner will be moving in sometime in April, 2017. The owner is a director for a distribution company and travels a lot. The owner is in a personal situation where he requires the rental unit as his home. The owner has other properties that are tenanted but they have fixed-term tenancies and the landlord cannot end those tenancies for the landlord's use. One was secured in October for a fixed-term commencing November 1, 2016 and the other was secured in November for a fixed term commencing December 1, 2016, and both were secured prior to asking the property manager to issue the notice to end this tenancy. One unit rents for \$1,375.00 per month plus a percentage of utilities, and the other rents for \$950.00 per month including utilities.

The landlord has spent over \$28,000.00 in improvements as well as repairs and rent reductions since this tenancy began. However, the landlord intends to occupy the rental

unit, and has that right as the owner. The owner intends to occupy the rental unit for the foreseeable future on an on-going basis except while out of town on business.

The owner also testified that the property manager wrote a letter to the tenant stating that the owner would be occupying it for the spring and summer, but that was not written by the owner, nor did the owner say that to the property manager. A copy has been provided for this hearing by the landlord, and it is dated March 9, 2017 from the property manager to the Residential Tenancy Branch and to the tenant. It states, in part: "The owner stated to me that he does wish to use the property himself during in the Spring and Summer this year, he will be away on business for some of the time but wants to enjoy this property at other times."

The rental unit is close to the lake, and the owner does not know for how long he will require the rental unit but is aware of consequences if the rental unit is not used for a reasonable time after the tenancy ends.

**The landlord property manager** testified that he has been acting in that capacity for the landlord since October, 2015.

Early in January, 2017 the owner told the property manager that he needed to move into the rental unit for at least the spring and summer and asked the property manager to issue a 2 Month Notice to End Tenancy for Landlord's Use of Property. The property manager served it by registered mail on January 19, 2017 and discovered that it had not been picked up by the tenant, so the property manager sent a copy to the tenant by email. No response was received from the tenant so the property manager sent a text asking if the tenant had received it and there was still no response from the tenant. On January 29 or 30, 2017 the property manager delivered it again in person but the tenant closed the door in his face without accepting it, so the property manager put it in the door.

A copy has been provided and it is dated January 19, 2017 and contains an effective date of vacancy of March 31, 2017. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)."

The property manager further testified that he had no conversation with the owner about ending the tenancy for any other reason other than a notice for unpaid rent in January, 2017. That was taken care of and there were no other instances of late rent. Rent is

paid up to date and the tenant has paid no rent for March, 2017 as compensation required under the law.

The property manager does not know about the details of other properties owned by the owner.

**The tenant** testified that the property manager arrived at the rental unit on January 30, 2017 and parties had a brief conversation. The property manager said that he was there for the purpose of serving the notice to end the tenancy because the owner wants the place for himself or a close relative.

The tenant also testified that the owner thinks the tenant is a difficult tenant and abusive from the history between the parties. Copies of letters and emails have been provided for this hearing.

The tenant has some physical disabilities and has provided letters from physicians dated February 7, 2017 and February 23, 2017 which state that the tenant may require knee surgery and should avoid at-risk activities and continue with low-impact physical activities.

The tenant has not paid rent for the month of March, 2017, as compensation required by the *Residential Tenancy Act* when such a notice is served, but the tenant has the means to pay rent for March.

The tenant does not believe the landlord's intent is in good faith to move into the rental unit and seeks an order cancelling the 2 Month Notice to End Tenancy for Landlord's Use of Property.

**The tenant's legal counsel** submits that just a week ago the landlord wrote different reasons, referring to the letter dated March 9, 2017 from the property manager to the Residential Tenancy Branch and to the tenant stating that the owner wish to use the property himself during in the spring and summer this year. There seems to be a changing reason as of a week ago.

If the notice is upheld, counsel submits that the tenant will need more time to move out, and given that there is no urgency for the owner to move in suggests that an effective date of vacancy be extended beyond the date contained in the landlord's notice.

### Analysis

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 reason(s) for issuing it. In the case of a 2 Month Notice to End Tenancy for Landlord's Use of Property, the landlord also bears the burden of establishing good faith intent to use the rental property for the purpose set out in the notice. I have reviewed the notice, and I find that it is in the approved form and contains information required by the *Act*. In this case, the tenant disputes the landlord's good faith intent.

Counsel for the tenant submits that as of a week ago the landlord wrote different reasons for ending the tenancy, and there seems to be a changing reason. I have also reviewed the other evidentiary material, and other than the letter of March 9, 2017, I seen no evidence of that, and the owner testified that he did not give those instructions to the property manager and didn't write the letter.

The tenant feels that the landlord has issued the notice ending the tenancy because the landlord feels the tenant is a difficult tenant. The owner disagrees, and the property manager, who gave independent testimony, testified that no such conversations between the owner and the property manager took place. He also testified that the owner asked that the notice to end the tenancy be issued because the owner needed to occupy it.

In the circumstances, I find that the owner has established good faith intent to use the rental unit for the purpose contained in the 2 Month Notice to End Tenancy for Landlord's Use of Property, and the tenant's application to cancel it is dismissed.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord.

The tenant's legal counsel submitted that the effective date of vacancy, if an Order of Possession is granted, be extended beyond the effective date of the landlord's notice to provide the tenant with more time to find alternate accommodation. The effective date of vacancy contained in the notice is March 31, 2017. The owner did not dispute that more time should be granted or that there is no urgency, and the tenant testified that she has the ability to pay rent. Considering those factors and the tenant's physical disabilities, I grant the Order of Possession effective at 1:00 p.m. on April 30, 2017.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end the tenancy for landlord's use of property is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on April 30, 2017.

The balance of the tenant's application is hereby dismissed with leave to reapply.

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: March 17, 2017

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Residential Tenancy Branch