



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

The Application for Dispute Resolution filed by the Tenants seek an order to cancel the two month Notice to End Tenancy dated March 31, 2017.

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 served on the Tenants by posting on March 31, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on April 14, 2017. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issue to be decided is whether the tenants are entitled to an order cancelling the two month Notice to End Tenancy dated March 31, 2017?

### Background and Evidence

The tenancy began on July 1, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$700 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$350 at the start of the tenancy.

### Grounds for Termination:

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

...

- All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit

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.

The tenants gave the following evidence:

- They have been in a dispute with the landlord that has involved several arbitration hearings and they question the good faith intention of the landlord to sell the property and whether this is a bona fide sale..

- The landlord altered the Contract of Purchase and Sale by blacking out all reference to who the purchaser is.
- The landlord altered the letter allegedly from the buyer by blacking out the name of the buyer.
- The 2 month Notice to End Tenancy is dated March 31, 2017. However, the letter allegedly from the buyer (buyer's name is blacked out) is dated April 3, 2017.
- The listing the landlord had with the real estate agent was cancelled on March 31, 2017.
- The Contract for Purchase and Sale indicates it was open for acceptance to 5:00 p.m. on March 31, 2017 which is after the close of business of the Residential Tenancy Branch.

The landlord gave the following testimony:

- He blacked out the name of the buyer in the contract of Purchase and Sale and the letter from the buyer because of privacy reasons at the request of the buyer.
- The buyer view the property 1 ½ months prior to acceptance and prior to the landlord entering into the listing contract. The listing contract with the agent contained a clause that if this buyer made an offer that was accepted by the landlord the listing agreement would be cancelled. This is a private sale.
- The real estate market is hot at the time and events happen very quickly.
- The relationship between the landlord and the tenants has improved over the last 4 months.

#### Analysis:

The landlord has the burden of proof to establish that at the time of the Notice to End Tenancy was served, that the landlord had a good faith intention to sell the property and that all of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit

After carefully considering all of the evidence I determined the landlord failed to prove the above requirement for the following reasons:

- The landlord blacked out the name of the purchaser on the contract for purchase and sale and the letter allegedly from the purchaser. In doing so it would be very dangerous for an arbitrator to accept these documents into evidence as the landlord has effectively prevented the tenants from investigating whether a valid

sale has taken place. The alleged purchaser did not testify at the hearing. I determined to accept this evidence would deny the tenants their right to investigate the evidence and as such it is inadmissible.

- Further, even if the evidence was accepted it is faulty. The letter given by the alleged purchaser is dated April 3, 2017 which is 3 days after the alleged contract was entered into. The Act requires that the purchaser give Notice in writing prior to giving the 2 month Notice to End Tenancy.
- The contract for purchase and sale states the new purchaser wants vacant possession but does not give a reason. The letter allegedly written by the new purchaser states that he wants vacant possession and "It is necessary for me that both levels of the home be vacant." This is insufficient to conclude the 2 month Notice to End Tenancy is valid as the purchaser must require vacant possession because "the purchaser or a close family member intends in good faith to occupy the rental unit." I can determined that the purchaser or a close family member intends to occupy the rental unit based on the evidence presented even if the evidence was admissible..

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy. I ordered that the Notice to End Tenancy dated March 31, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

**This decision is final and binding on the parties.**

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: May 17, 2017

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Residential Tenancy Branch