



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL, MNDC, FF, O

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order cancelling a notice to end the tenancy for landlord's use of property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The landlord was also accompanied by legal counsel, and each party called one witness, both of whom also gave affirmed testimony. The parties, or legal counsel, were given the opportunity to question each other and the witnesses, and to give closing submissions.

At the commencement of the hearing, the landlord agreed to cancel the One Month Notice to End Tenancy for Cause, and I hereby cancel it.

Also, during the course of the hearing the landlord's legal counsel took issue with respect to the tenants' amendment to the application including a monetary claim that was not contained in the tenant's original application. I determined that the tenant's application for monetary compensation is not sufficiently related to the primary dispute, being the application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, and I dismiss the tenant's monetary claim with leave to reapply.

No issues with respect to exchanging evidence were raised by either party.

### Issue(s) to be Decided

The issue remaining to be decided is:

- has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act* and in good faith?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on October 1, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$1,350.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The tenancy agreement, a copy of which has been provided as evidence for this hearing, specifies a security deposit in the amount of \$675.00, however the landlord testified that it was never collected, nor was any pet damage deposit. The rental unit is a suite in the lower level of a house, and the landlord resides in the upper level.

The landlord further testified that the tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property on May 31, 2017. A copy of the first page of the notice has been provided as evidence by the tenant, and it is dated May 31, 2017 and contains an effective date of vacancy of August 1, 2017. The landlord testified that the tenant complained that she didn't have page 2, so the landlord gave her page 2, and believes that was on June 7.

The landlord testified that her son will be moving into the rental unit on August 1, 2017. He has been diagnosed with schizophrenia and currently lives with the landlord. The doctor says that the landlord's son should have independent living. Presently 8 people, including the landlord's 2 sons reside with the landlord.

**The landlord's witness** testified that he is the landlord's son and intends to occupy the rental unit effective August 1, 2017 and will pay rent to his mother. He does not intend to move out of the rental unit.

**The tenant** testified that the landlord only served the first page of the 2-page notice on May 31, 2017 and the 2<sup>nd</sup> page wasn't served. The tenant knew she had a deadline to dispute the notice, and testified that the landlord served the second page on June 7, 2017. The tenant had provided both pages as evidence to the Residential Tenancy Branch for this hearing, and submitted 3 sets of documents.

The tenant further testified that the landlord's friends have shown up at the rental home with all of their belongings in a U-Haul, and they are all still there. The tenant does not believe the landlord has good faith intent to use the rental unit for the purpose contained in the notice, and believes the landlord's friends will be occupying it.

**The tenant's witness** testified that she has known the landlord for a long time, and testified that the landlord has told the witness several times that because of his condition, the landlord's son has a difficult time doing things, like getting a job. Since he was diagnosed, he's been staying at home with his mother, and the landlord told the witness he would be living with her for the foreseeable future.

The witness used to live in the main house and rented a room with the landlord, and believes that, knowing the landlord's son, he would have a difficult time residing alone in the rental unit.

**Submissions of the tenant:**

The tenant submits that the landlord has not satisfied the good faith intent to move her son into the rental unit. Two previous attempts to move the tenant out didn't work, and other people have moved in with the landlord and moved their belongings there with a U-Haul.

**Submissions of the landlord's legal counsel:**

The reason the landlord's son is moving in is not relevant, but only that he intends to occupy the rental unit and intends to indefinitely. There is conflicting evidence with respect to what was served to the tenant – page 1 and page 2 of the notice. The parties do agree that the tenant has both pages, and if there is a finding that it was not served until June 7, 2017, then pursuant to Section 53 of the *Act*, the tenancy ought to end on August 31, 2017 as opposed to the effective date contained on page 1 (August 1, 2017).

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.

I agree with counsel that the reason the landlord's son is moving into the rental unit is not particularly relevant, only whether or not the landlord has established good faith intent and that the landlord's son intends to occupy the rental unit. I have no reason to disbelieve the landlord or the landlord's son, and I am satisfied that he does intend to reside in the rental unit, and therefore I dismiss the tenant's application to cancel the notice.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. The parties agree that the tenant now has page 2 of the notice, and I questioned the tenant about what evidence was provided to the Residential Tenancy Branch. The Rules of Procedure require a tenant to provide a copy of the notice received, and the tenant testified that she did so, but I do not have a copy. The landlord has provided evidentiary material but not a copy of either notice to end the tenancy, and in the absence of both pages, I cannot be satisfied that the Two Month Notice to End Tenancy for Landlord's Use of Property is in the approved form. Therefore I decline to issue an Order of Possession.

Since the tenant has not been successful with the application the tenant is not entitled to recovery of the filing fee.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated May 1, 2017 is hereby cancelled, by consent.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The tenant's application for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property is hereby dismissed.

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: June 21, 2017

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Residential Tenancy Branch