



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**     DRI, CNC, CNL, and OLC

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit written evidence for this hearing.

The tenant confirmed receipt of the following 4 Notices to End Tenancy: the 1 Month Notice dated April 29, 2017; the 2 Month Notice dated April 29, 2017; the 1 Month Notice dated May 4, 2017; and the 2 Month Notice dated May 4, 2017. I find that these documents were duly served to the tenant in accordance with section 88 of the *Act*.

At the beginning of the hearing the landlord indicated that he was not issuing any rent increases for this tenancy at this time, and that he was only proceeding on the 2 Month Notice dated May 4, 2017. The tenant withdrew his application to dispute the rent increase, and the landlord withdrew his Notices to End Tenancy with the exception of the 2 Month Notice dated May 4, 2017.

### **Issues to be Decided**

Should the landlord's 2 Month Notice, dated May 4, 2017, be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

### **Background and Evidence**

The landlord testified that this month-to-month tenancy began sometime around April 2008, with monthly rent set at \$750.00. The landlord holds a security deposit of \$325.00, and the tenant continues to reside in the rental unit.

On April 29, 2017, the landlord issued a 1 Month Notice and a 2 Month Notice to the tenant, but cancelled these two notices during the hearing. On May 4, 2017, the landlord re-issued the 1 Month and 2 Month Notices, and indicated in the hearing that he was withdrawing the 1 Month Notice, and was only proceeding with the 2 Month Notice, with an effective move-out date of July 31, 2017.

The landlord issued the 2 Month Notice, dated May 4, 2017, for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord testified that he was diagnosed with pancreatic cancer, and issued the 2 Month Notice so that his brother could move in. The landlord's plan was to renovate the suite first, and then his brother would move in after the renovations were complete. The landlord testified that his brother lived in a nearby town, and he had no timeline yet as he was still waiting for cancer treatment. The landlord explained in the hearing that he had issued multiple notices as the previous ones were not issued in the correct form, and did not contain the tenant's full name. He testified that the tenant was often late with his payments, but he was not able to provide supporting statements in his evidence for the hearing, so he cancelled the 1 Month Notices.

The tenant questioned the good faith of the landlord in his issuance of the 2 Month Notice. He testified that the landlord had attempted to end this tenancy on multiple occasions, for different reasons each time. The tenant testified that the intention of the landlord was to fill the vacancy with foreign workers for his store, and not for the

purpose provided by the landlord. The tenant testified that the 1 bedroom apartment next door was vacant for the last two months, and was just recently rented out again. He testified that this was a 12 unit building, and his was a 2 bedroom unit. The tenant testified that the landlord had not provided any evidence to support any late payments of rent, and that the landlord was simply making multiple attempts to end this tenancy.

The tenant submitted, in evidence, several letters from the landlord. A signed letter, dated February 6, 2017, read "Subject: EVICTION NOTICE. The Condition of renting unit \*\*\* of this apartment to you have been month to month notice basis for a long time. At this time our company faces an urgent requirement of use of the unit for recruiting employees. As we already explained to you in verbal notice, we would kindly request you to vacate the unit as soon as possible but not later than one month from this date. Your kind cooperation would be very much appreciated". Another signed letter, dated February 16, 2017, was given to the tenant, which read "Last 8 and ½ years, I haven't applied a minimum inflation rate each year on your rent while water and sewer bill has increased at least 20% more. As a result, if you insisted occupying your suite it won't be \$750, I'd like to make it realistic. I'm rewriting the reason being for the eviction notice. I'd like to updated and remodel the suite and rent it out at a reasonable cost. I'm really sorry to inform you that the eviction notice still in effect." On April 17, 2017, the landlord issued the following letter to the tenant: "To: The tenant Suite \*\*\*, There have been a number of increases in our utility bills yet we have not refelcted any portion of the increases to rent fee so far for almost 8 years. This time have decided to increase the monthly rent to \$900.00 per month effective May 2017".

The landlord maintains that although he had not obtained any permits or quotations, his intention was to renovate the unit with new drywall, flooring, and kitchen fixtures. He testified that he had not updated the unit for over ten years, and was hoping his brother could move into the unit in August or September 2017. The landlord indicated at the beginning of the hearing that he was not proceeding on any of the prior 1 and 2 Month Notices, or the letters entered in evidence by the tenant. The landlord also indicated that he was not pursuing the rent increase noted in the letter dated April 17, 2017.

The tenant is requesting an order for the landlord to comply with the *Act*. The tenant testified that the landlord failed to give proper notices to end tenancy, and that he was repeatedly attempting to increase the rent in a manner not in accordance with the *Act*.

### **Analysis**

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlord states that his brother intends to occupy the suite.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*“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 that they do not have an ulterior motive for ending the tenancy.”*

Although the landlord stated that he had issued the 2 Month Notice in order for his brother to move into the suite, I find that the tenant raised considerable doubt as to the true intent of the landlord in issuing this notice. He gave undisputed sworn testimony that this was the second 2 Month Notice issued to him, in addition to two other 1 Month Notices, and letters of eviction. The tenant submitted, in evidence, these letters from the landlord which support the fact that the landlord had attempted to end this tenancy for multiple reasons, on multiple occasions. As the tenant raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy. I also note that the landlord indicated that his brother was moving in, and a sibling is not considered a close family member as defined by section 49(1) of the *Act*, and on this basis I find the 2 Month Notice was not issued in accordance with the *Act*.

I find that the landlord has not met their burden of proof to show that he did not have any other purpose in ending this tenancy. I also find that the landlord's brother is not considered a close family member as defined by section 49(1) of the *Act*. Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month

Notice, dated May 4, 2017, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant expressed concern that the landlord had attempted to increase the rent in a manner that does not comply with sections 42 and 43 of the *Act*. Although the landlord withdrew his notice to increase the rent, I note that the landlord had attempted to increase the rent by 20%, and in a manner that does not comply with section 42 of the *Act*. Sections 42 and 43 of the *Act* address the timing, notice and amount of rent increases permitted by legislation. I make an order that the landlord must comply with the *Act* in issuing any future rent increases.

### **Conclusion**

The tenant withdrew his application to dispute the landlord's rent increase, and the landlord withdrew his Notices to End Tenancy with the exception of the 2 Month Notice dated May 4, 2017.

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated May 4, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I make an order for the landlord to comply with sections 42 and 43 of the *Act* in issuing any future rent increases.

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 28, 2017

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Residential Tenancy Branch