



# 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 Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated June 5, 2017
- b. An order to recover the cost of the filing fee.

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 personally served on the Tenant on June 5, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on June 13, 2017. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated June 5, 2017?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on December 1, 2013 when the parties entered into a one year fixed term tenancy agreement. The tenancy agreement provided that the tenant(s)

would pay rent of \$900 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$450 on October 23, 2014.

Grounds for Termination:

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

- 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 they need the rental unit as a music practice room for their daughter who is going into grade 9. She has majored in piano and cello. Presently her piano is in the living room. The tenants have complained that her practicing disturbs them. She is enrolled in a fine arts school and needs a quiet practice room. They have no plans to rent the rental unit after the tenants vacate.

The tenants testified as follows:

- Shortly prior to being served with the Notice to End Tenancy the landlord approached them about increasing the rent to \$1000 per month plus the requirement of the tenants having to pay 1/3 of the utilities.
- At this time the female landlord advised the tenants she intended to move to Alberta to be with her husband. It was easier to rent the entire house out to a new tenant rather than have the tenants in the basement.
- The tenants produced an advertisement for the rental of the entire home for \$3200 per month.

The landlord responded stating they no longer wish to move to Alberta. It is no longer possible to enroll their daughter into the proposed school. Their daughter is now enrolled in a fine arts school that is local.

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.

#### Analysis:

An arbitrator is asked to determine whether the landlord has grounds to end the tenancy at the time the Notice to End Tenancy was served.

The tenants have brought the good faith intention of the landlord into question. The landlord has the burden of proof that they did not have a ulterior motive at the time the 2 month Notice was served on the Tenants on June 5, 2017.

After hearing the disputed evidence of the parties I determined the landlord has failed to establish a "good faith" intention at the time they served the Notice on the Tenants for the following reasons:

- I determined that on June 5, 2017 the landlord and his family intended to move to Alberta. They had put their house up for rent. The female landlord advised the tenant she intended to move to Alberta by text message dated May 25, 2017.

- The landlord attempted to negotiate a \$100 rent increase plus the obligation on the tenant to pay ½ of the utilities. This is consistent with the landlord attempting to rent the upper portion of the rental property with the new tenants and the applicants sharing the tenancy.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the 2 month Notice to End Tenancy dated June 5, 2017 be cancelled. The tenant shall continue with the rights and obligations of the parties remaining unchanged. I further order that the landlord pay to the Tenants the cost of the filing fee in the sum of \$100j.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**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: August 09, 2017

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Residential Tenancy Branch