



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL, FF

### Introduction

This hearing dealt with a tenant's application to cancel *1 Month Notice to End Tenancy for Cause* and a *2 Month Notice to End Tenancy for Landlord's Use of Property*, as amended. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the start of the hearing the landlord stated that she had sent evidence to the Residential Tenancy Branch, via fax, the evening before the hearing. I noted that I had not yet received the evidence. The landlord also stated that the evidence had not been served upon the tenant. Evidence that a party intends to rely upon must be provided to the other party. There are time limits for providing evidence to the other party and the Residential Tenancy Branch as provided in the Rules of Procedure. I have not considered the landlords' documentary evidence in making this decision as it was not served upon the tenants. Rather, the landlord's evidence consisted of oral submissions only that were made during the hearing.

The tenants had indicated they were seeking several remedies in filing this application. Rule 2.3 of the Rules of Procedure authorizes me to dismiss unrelated matters that are contained in a single application. Since the tenants remain in possession of the rental unit and wish to continue to do so, I determined that the most urgent issue to determine is whether the tenancy has ended or will end based upon one of the Notices to End Tenancy before me and that was the primary focus of this proceeding. The other remedies sought by the tenants have been dismissed with leave to reapply.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be upheld or cancelled?

Background and Evidence

The tenancy started on or about June 2, 2016. There is no written tenancy agreement. The tenants are required to pay rent of \$960.00 per month and the landlords collected a security deposit of \$480.00. The rental unit is one of two basement suites in the house and the landlords occupy the main living unit above.

The landlord posted a *1 Month Notice to End Tenancy for Cause* ("the 1 Month Notice") on the door of the rental unit. The landlord stated that it was posted on July 1, 2017. The tenant stated that it was posted on July 6, 2017. In any event, the tenants filed to dispute the 1 Month Notice within the time limit for doing so. The 1 Month Notice has a stated effective date of July 31, 2017. The box corresponding to "Tenant is repeated late payment of rent" is indicated on the second page of the 1 Month Notice; however, the "Details of Cause" space was left blank.

The day the monthly rent is payable was under dispute. The landlord stated that the rent is payable on the first day of the month. The tenant stated that when the tenancy formed a due date was not set and that the tenant informed the landlord that he is paid on the 7<sup>th</sup> and 28<sup>th</sup> day of every month.

The landlord stated that since January 2017 the tenant has been paying rent on or about the seventh day of every month. The tenant stated that rent has ordinarily been paid in the first week of the month since the tenancy started.

The tenant submitted that the landlord did not raise an issue with the date rent had been paid until after the landlord requested the rent increase from \$960.00 to \$1,150.00 in June 2017 and the tenant refused to pay such an increase. The landlord denied that more rent was requested from the tenants and the landlord submitted that the tenant had offered to pay more rent after the 1 Month Notice was served. The tenant submitted that when the tenant refused to pay \$1,150.00 per month the landlords told the tenants they would have to leave.

During the hearing, the tenant stated that he was agreeable to setting a due date going forward, including the first day of every month, to avoid further dispute regarding the day rent is payable.

The landlord posted a *2 Month Notice to end Tenancy for Landlord's Use of Property* (the "2 Month Notice") on the door of the rental unit on August 31, 2017. The 2 Month Notice has a stated effective date of October 31, 2017 and indicates the reason for ending the tenancy is: "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 landlord explained that a 2 Month Notice to End Tenancy was issued even though a 1 Month Notice had been issued because the tenant disputed the 1 Month Notice.

The landlord submitted that on May 28, 2017 she was in a serious car accident and after that her mother-in-law had knee surgery. As a result of the accident and her mother in law's physical restrictions the landlord is having difficulty caring for her children, including cooking and getting them ready for school, and wants to have her parents move into the rental unit to help her with her daily activities. The landlord stated that her parents reside out of the country six months of the year.

The tenant submitted that the 2 Month Notice is merely another way the landlord is attempting to end the tenancy so that the landlord's may rent the unit for more money. The tenant doubts the landlord's parents will be moving in to help the landlord as she does not appear that disabled as he has seen her driving, but that the other basement suite in the house was just re-rented instead of using it for the landlord's parents.

The landlord stated that the other basement suite was rented starting on August 1, 2017 and that the landlord's doctor had recommended that she get help caring for her household in August 2017. Also, the other basement suite does not have an interior access door like the rental unit does.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to the 1 Month Notice and the 2 Month Notice.

### *1 Month Notice to End Tenancy for Cause*

Section 52 of the Act provides for the form and content of notices to end tenancy. Among other things, in order for a notice to end tenancy to be effective it must be in the approved form when given by a landlord.

The Director has the authority to approve forms pursuant to section 10 of the Act, which provides:

#### **Director may approve forms**

**10** (1) The director may approve forms for the purposes of this Act.

(2) Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

The 1 Month Notice to End Tenancy for Cause that is in the approved form provides a section entitled Details of Cause. In this section, the form states: "Include any dates, times, people or other information that says who, what, where or when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered)."

The 1 Month Notice that is the subject of this proceeding was in the approved form but I find that it was not sufficiently completed given the lack of "details of cause". In keeping with the principles of natural justice, a person receiving an eviction notice is entitled to know the reason(s) for its issuance so that they may adequately respond or prepare a defence to the allegations against him/her. In this case, there was a dispute as to when rent is payable; there is no written tenancy agreement and the tenant had been paying rent after the first day of every month for several months without any written warning letter. Therefore, I find the landlords' failure to complete the Details of Cause section of the approved form to be prejudicial to the tenants.

In light of the above, I grant the tenant's request that I cancel the 1 Month Notice to End Tenancy for Cause.

*2 Month Notice to End Tenancy for Landlord's Use of Property*

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

Where a landlord seeks to end the tenancy so that the landlord, or landlord's close family member, may occupy the rental unit, the landlord has the burden to prove two things: that the landlord intends to use the rental unit for the purpose stated and the landlord's intention is in good faith.

Residential Tenancy Policy Guideline 2: *Good faith requirement when ending a tenancy*, provides, in part:

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.

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 landlord claims that she needs her parents to move into the rental unit so that they may help her with her daily activities that she is has difficulty performing after having a car accident. I did not hear or receive any evidence form the landlord's parents of their intention to occupy the rental unit. Also, the tenant called the landlord's good faith intention into question in asserting that the Notices to End Tenancy were served after the tenant rebuffed the landlord's attempts to raise the rent. I find the landlords' decision to issue a 2 Month Notice after the tenant disputed the 1 Month Notice also points to an ulterior motive for issuing the 2 Month Notice. For these reasons, I find the landlords did not sufficiently meet their burden to prove the landlord has a good faith intention to end the tenancy so that the landlord or close family member may occupy the rental unit and I grant the tenants' request that I cancel the 2 Month Notice.

Having cancelled both of the Notices to End Tenancy, the tenancy continues at this time until such time it legally ends. In keeping with the authority afforded me under section 62(3) of the Act, and with a view to avoiding future disputes, **I ORDER that the tenants are obligated to pay their monthly rent by the first day of every month starting October 1, 2017.**

Since the tenants were successful in this application, I award the tenants recovery of the \$100.00 filing fee they paid for this application. To satisfy this award the tenants are authorized to deduct \$100.00 from a subsequent month's rent payment and in doing so the landlords must consider that month's rent payment to be paid in full.

### Conclusion

The 1 Month Notice dated July 1, 2017 and the 2 Month Notice dated August 31, 2017 are cancelled and the tenancy continues at this time.

I have ordered that the tenants are required to pay rent by the first day of every month starting on October 1, 2017.

The tenants are authorized to deduct \$100.00 from a subsequent month's rent to recover the filing fee paid for this application.

The remainder of the remedies sought by the tenants in this application were 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: September 19, 2017

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Residential Tenancy Branch