



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** CNL; MNDC; FF

### **Introduction**

This is the Tenants' Application for Dispute Resolution made October 6, 2017, seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property issued September 18, 2017, (the "Notice"); monetary compensation under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Both parties attended the Hearing and gave affirmed testimony.

The Tenant AG testified that she mailed the Notice of Hearing to the Landlord by registered mail on October 14, 2017. The Tenant provided a copy of the registered mail receipt and tracking number. The Tenant testified that the Landlord refused to accept service of the registered mail, so the Tenant mailed another package including the Notice of Hearing documents and copies of the Tenants' documentary evidence, by registered mail on November 23, 2017. A copy of the registered mail receipt and tracking number for this package was also provided in evidence. I find that the Landlord was duly served with the Notice of Hearing package and the Tenants' documentary evidence.

The Tenant AG testified that she received a copy of the Landlord's documentary evidence in her mail box on February 2, 2018. This evidence, a copy of the tenancy agreement and a copy of a Divorce Certificate, is late; however, the Tenant did not object to it being referred to. The Tenants also provided a copy of the same tenancy agreement in their documentary evidence.

### **Issue(s) to be Decided**

Should the Notice be upheld or cancelled? Are the Tenants entitled to a monetary award for harassment?

### **Background and Evidence**

This tenancy began on November 1, 2012. Monthly rent is \$1,170.00, due on the first day of each month. Rent includes utilities, except cable, internet and telephone. The tenancy began as a 4 month lease and continued thereafter on a month-to-month basis.

A copy of the Notice was provided in evidence. The Tenant AG testified that she found the Notice in the Tenants' mail box on September 26, 2017. The Proof of Service document signed by the Landlord provides that the Notice was served by "leaving a copy in the mail slot at the tenant's residence" on September 18, 2017. The Proof of Service document is not signed by a witness. Section 90 of the Act deems service in this manner to be effective 3 days after posting the document; however, the deeming provision is only used absent evidence to the contrary. I accept the Tenant's affirmed testimony with respect to the date that she received the Notice. The Tenants are disputing the Notice and question the Landlord's "good faith" intentions.

The rental unit is a carriage house on the rental property. Members of the Landlord's family live in the main house on the rental property. The Landlord lives elsewhere. The Landlord testified, "My name is on the house, but my parents own the house. I actually don't own the house".

The Notice provides:

"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 testified that her parents divorced "a year ago", and that one of them will be moving into the rental unit. When question about which parent would be moving, she stated that "probably" her father will be moving into the rental unit and that her mother is currently in China, returning on February 11, 2018. The Landlord stated that her father currently lives in the main house and that when her mother returns, her mother will be moving into the main house.

The Tenant AG responded that the Divorce Certificate indicates that the Landlord's parents were divorced two years ago, in March, 2016. She stated that the Landlord's parents have both lived in the main house since the beginning of the tenancy and that there are no signs that there are any problems with them getting along. AG testified that the Landlord's mother often goes to China for a couple of months and then comes back.

The Tenant AG stated that the Landlord told the Tenants that her mother would be moving into the rental unit.

The Tenant AG stated that this is the fourth time in one year that the Landlord has attempted to evict the Tenants. AG testified that the Landlord has tried to evict the Tenants for the following reasons within the last year:

1. The Landlord's cousins were coming and needed to move into the rental unit.
2. Landlord wanted to do renovations that required the rental unit to be vacant. The Tenants disputed that notice and were successful because the Landlord had no work permits.
3. The Landlord's grandparents were coming and were going to move into the rental unit. The Tenants disputed that notice and a Hearing took place on January 24, 2017. A copy of the Decision was provided in evidence. The Tenants were successful in cancelling the Notice to End Tenancy because grandparents are not considered to be "close family members" under the Act.

The Tenant testified that in the summer of 2016, the Landlord tried to raise the rent 4 x the legal limit. The Tenants believe that the Landlord seeks to evict the Tenants so that she can get more rent for the rental unit. AG testified that 10 days after the January 24, 2017 Hearing, the Tenants got a notice to increase the rent.

The Landlord denied that she has any ulterior motive to evict the Tenants.

The Tenant AG stated that in March, 2017, the main house was listed for rent. She stated that she only discovered two days ago that the main house was re-listed for rent on Craigs List on February 3, 2018.

When I asked the Landlord if she had listed the main house for rent, the Landlord replied that she "didn't know that".

The Tenant read the ad from her computer, and stated that the main house was advertised as a one year lease for \$5,600.00 a month. The house was listed as fully furnished and ready for immediate possession. AG stated that the main house was described as 7,685 square feet with 6 bedrooms and 4 ½ baths.

I asked the Landlord if the ad described her house, and she replied. "I don't know that".

## **Analysis**

The Tenants called into question the Landlord's motive for issuing the Notice. When a tenant questions the "good faith" intent of a landlord, the onus is on the landlord to provide sufficient evidence, on the balance of probability, that there is no ulterior motive for ending the tenancy.

The Landlord was vague in her testimony with respect to which parent was going to move into the rental unit. She was also extremely evasive when I asked her if she had listed the rental unit for rent. I accept the Tenant's affirmed testimony that the main house is currently listed for rent.

I find that, on a balance of probabilities, the Landlord was not acting in good faith when she issued and served the Tenants with the Notice.

Therefore, for the reasons outlined above, I find that the Landlord is attempting to end the tenancy in bad faith and **the Notice is cancelled.**

The Tenants have also applied for compensation under Section 67 of the Act, in the amount of \$1,700.00 and recovery of the cost of photocopies and registered mail charges. The Decision of January 24, 2017, contains the following paragraph:

"I note that unfamiliarity with the law does not provide a defense. The landlord was encouraged to become aware of the rights and responsibilities set out in the legislation. The landlord was also informed that a tenant has a right to quiet enjoyment which could be affected by repeated attempts to have the tenants vacate when the reason is not supported by the legislation and a good faith intention."

I find that the Landlord has breached the Tenants' right to quiet enjoyment of the rental unit and that the Tenants are entitled to compensation for the Landlord's breach of the Act. Further to the provisions of Section 67 of the Act, I allow the Tenants' claim for compensation in the amount of **\$1,700.00**. The Act does not provide for recovery of the cost of photocopies or registered mail. This portion of the Tenants' claim is dismissed.

The Tenants have been successful in their Application to cancel the Notice and I find that they are entitled to recover the cost of the **\$100.00** filing fee from the Landlord.

Further to the provisions of Section 72 of the Act, the Tenants may deduct **\$1,800.00** from future rent due to the Landlord.

## **Conclusion**

The Two Month Notice to End Tenancy for Landlord's Use of Property issued September 18, 2018, is cancelled. **The tenancy will continue until it is ended in accordance with the provisions of the Act.**

Further to the provisions of Section 72 of the Act, **the Tenants may deduct \$1,800.00, representing compensation for loss of quiet enjoyment of the rental unit and recovery of the filing fee, from future rent due to the Landlord.**

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: February 09, 2018

---

Residential Tenancy Branch