



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNL; MNDC; OLC; FF

### **Introduction**

This is the Tenant's Application for Dispute Resolution made February 16, 2018, seeking to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; compensation for damage or loss under the Act, regulation or tenancy agreement; an order that the Landlord comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Both of the parties attended the Hearing which took place by teleconference. The parties gave affirmed testimony. The hearing process was explained and the parties were given an opportunity to ask questions about the process.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

The Notice of Hearing package and copies of the Tenant's documentary evidence were mailed to the Landlord, by registered mail. The Landlord acknowledged receiving the Tenant's documentary evidence.

The Landlord mailed two packages of documentary evidence to the Tenant, both by registered mail. I was unable to open the video file; however, the Tenant acknowledged receipt of the Landlord's documents.

The Tenant is seeking an order that the Landlord comply with the Act, regulation or tenancy agreement; however, the Tenant did not specify which section of the Act,

regulation or tenancy agreement he seeks the Landlord to comply with. Therefore, this portion of his Application is dismissed.

Section 2.3 of the Rules of Procedure provides that claims made on the same Application must be sufficiently related. I find that the Tenant's application for compensation is not sufficiently related to his application to cancel the Notice to End Tenancy. Therefore, this portion of his Application is dismissed **with leave to reapply**.

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

Is the Notice to End Tenancy for Landlord's Use of Property issued January 29, 2018, a valid notice to end the tenancy?

### **Background and Evidence**

The rental property is a house which contains two suites. The Tenant is the Landlord's son and resides in the upper suite. The Landlord's property manager is the Tenant's brother.

The lower suite is occupied by person to whom the Tenant testified he has "sublet" with the Landlord's permission. The Landlord denies giving such permission to the Tenant. The Landlord stated that the downstairs suite is an "illegal suite", but that she has rented it out in the past.

There is no written tenancy agreement with respect to this tenancy. The Landlord stated that rent is due "usually by the first of the month". The Tenant testified that there was no set date that rent is due, but that he usually pays it at the beginning of the month. The Landlord testified that monthly rent is \$1,037.00. The Tenant testified that rent was \$1,000.00, but the Landlord "illegally" increased it and that he has been overpaying by \$37.00 for 13 month. No security deposit was required or paid.

The Landlord served the Tenant with the Notice to End Tenancy by posting it to the Tenant's door on January 29, 2018. Service in this manner is deemed to be effected three days after posting, February 1, 2018. The Tenant made his Application to dispute the Notice to End Tenancy on the last day of the time period allowed under Section 49(8) of the Act. The Landlord's reason for seeking to end the tenancy is that "The rental unit will be occupied by the landlord or the landlord's close family member". The Notice to End Tenancy provides:

|   |                               |                                   |                      |
|---|-------------------------------|-----------------------------------|----------------------|
| daytime phone   | other phone                   | BIA TRUTHFUL FOR UNLAWFUL SERVICE |                      |
| <b>NOTICE TO END TENANCY: I, the landlord, am hereby giving you two months' notice to move out of the rental unit located at:</b> |                               |                                   |                      |
| all   | 4376- BALLSON Rd              | PORT ALBERNI                      | B.C. V9Y 5V3         |
| unit number   | street number and street name | city                              | province postal code |

The Landlord testified that she wrote "all" on the Notice to End Tenancy because she wishes to occupy the whole of the house, not just the upper suite.

The Tenant stated that he does not believe the Landlord intends to move into the rental unit and that in any event, he questions the "good faith intent" of the Landlord.

The Landlord testified that she wants to move into the rental property "as quickly as possible" because she wants to move closer to her "other son, his wife and grandson". She stated that she intends to take care of her grandson while her son and his wife are working.

The Tenant testified that in "September last year" the Landlord attempted to raise the rent to \$1,600.00. The Tenant stated that he did not agree to the increase, so the Landlord attempted to evict the Tenant for cause. The Tenant disputed that notice to end the tenancy and a Hearing was held on October 5, 2017. On October 6, 2017, the Arbitrator gave her Decision, cancelling the notice to end tenancy for cause. A copy of the October 6<sup>th</sup> Decision was provided in evidence.

The Tenant stated that the Landlord has a "beautiful home on the water an hour away from her other son, his wife and grandson. He questioned why she would need to move in order to take care of her grandson because her other son does business where she lives and could bring her grandson to her current residence.

The Landlord then testified that she has to do "extensive renovations" to her current residence and has made arrangements with her contractor to "tear the place apart". The Landlord stated that her contractor is her other son, who is also her property manager.

The parties were provided with an opportunity to come to an agreement with respect to an end of tenancy date, but were unsuccessful.

## Analysis

When a Tenant seeks to cancel a Notice to End Tenancy, the onus is on the Landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the Notice.

Residential Tenancy Policy Guideline 2 addresses the “good faith” requirement when ending a tenancy:

### **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.

[Reproduced as written.]

In this case, the Landlord first stated that she wants to babysit her young grandson and therefore wishes to move closer to him. She later stated that she needed to move because she was going to do major renovations at her current residence and therefore needs to move into the rental unit. The Landlord did not provide any building permits or plans for such major renovations in order to support this contention, but in any event the Landlord did not indicate that as a reason for ending the tenancy on the Notice. It was

unclear from her testimony as to which of the two reasons was the reason she sought to end the tenancy.

With respect to good faith intent, I find that the Landlord failed to establish that she does not have an ulterior motive for ending the tenancy. Some four months after the Landlord was unsuccessful in evicting the Tenant for Cause, she issued a Notice to End Tenancy for her own use of the property. The Arbitrator in the October 6<sup>th</sup> Decision found that “the only disturbance caused by the Tenant is his refusal to move out of the unit so that the Landlord can obtain higher rent. This is not a valid reason to end the tenancy”. I find it probable that the Landlord wishes to end the tenancy so that she can command a higher rent and therefore has an ulterior motive for ending the tenancy. The Notice to End Tenancy is therefore cancelled.

The Tenant’s Application to cancel the Notice has been successful and I find that he is entitled to recover the cost of the filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct **\$100.00** from future rent due to the Landlord.

### **Conclusion**

The Notice to End Tenancy for Landlord’s Use of Property is **cancelled**. The tenancy will continue until it is ended in accordance with the provisions of the Act.

The Tenant may deduct **\$100.00** from future rent due to the Landlord, representing recovery of the cost of the filing fee.

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: April 24, 2018

---

Residential Tenancy Branch