



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LUXMORE REALTY (AS AGENT)  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** CNL, MNDC, OLC, FF

### **Introduction**

This hearing dealt with the tenant's application for dispute resolution, to cancel a notice to end tenancy for landlord's use of the property. The tenant also applied for an order directing the landlord to comply with the *Act* and for a monetary order for compensation and the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony and to make submissions. The landlord was represented by an agent. As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for an order for the landlord to comply with the *Act* and for a monetary order for compensation. As these sections of the tenant's application are unrelated to the main section which is to cancel the two month notice to end tenancy, I dismiss these sections of the tenant's claim with leave to reapply. Accordingly this hearing only dealt with the tenant's application to set aside the notice to end tenancy.

It is important to note that I had difficulty understanding the testimony of the landlord's agent as it was apparent that English was his second language. The agent did not have access to assistance. I did my best to understand the agent's testimony by repeating questions and by asking for confirmation and/or clarification.

### **Issues to be Decided**

Has the landlord served the notice to end tenancy in good faith?

### **Background and Evidence**

The tenancy started on July 01, 2017, for a fixed term of one year. A copy of the tenancy agreement was filed into evidence. The agreement contained a vacate clause that was initialled by the tenant in acceptance that at the end of the fixed term on June 30, 2018, the tenancy will end and the tenant will be required to move out.

To provide some clarity for the future of the tenancy, the parties were advised that effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term if the tenancy agreement is a sublease agreement or if a landlord or close family member of the landlord intends to occupy the site at the end of the fixed term.

Transitional provisions in the legislation apply the change to fixed term tenancies retroactively. If a fixed term tenancy agreement is currently in effect and contains a clause that requires a tenant to vacate the rental unit on a specified date, that clause is no longer enforceable in most circumstances.

On May 25, 2018, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property, to be effective on July 31, 2018. The reason the landlord gave the notice to the tenant is described as, the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse. The tenant disputed the notice in a timely manner on the grounds that the notice to end tenancy was not served in good faith.

The tenant testified that the landlord stated that her family was visiting her and that she would need to move out of her current residence to accommodate them. The tenant referred to copies of airline tickets of the landlord's visitors that indicate that her visitors will be visiting from June to September 2018. The tenant stated that she did not see reason for the landlord to end the tenancy on a permanent basis. The tenant also stated that the landlord's reason for wanting to live in the rental unit because it was within walking distance of the elementary school was not credible because the landlord had only one child who was in high school.

### **Analysis**

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove they are acting in good faith. The agent for the landlord stated that the landlord has two children and the younger child is six years old and will be going to grade one. The agent did not have any information on where the child last attended school prior to the summer break. The agent also did not have information on the school that the older child attended and whether the landlord owned her home or was renting. The agent was

firm in that the landlord wanted to be able to walk the younger child to school and therefore wanted to move into the rental unit, which would allow her to do so.

The agent did not file documents to support his testimony that the younger child was indeed the child of the landlord and that the child was enrolled in the school that is in close proximity of the rental unit.

Based on my understanding of the sworn testimony of the landlord's agent, I find that the agent was not fully knowledgeable of the landlord's situation and reasons for wanting to move into the rental unit. I further find on a balance of probabilities that it is more likely than not that the landlord did not serve the tenant with a notice to end tenancy for landlord's use of property, in good faith or that the agent was unable to provide proper information to demonstrate the good faith requirement. In the absence of sufficient evidence to support his testimony; I find that the landlord has not met the good faith requirement of the legislation. Therefore, I find that the notice to end tenancy must be set aside.

Since the tenant has proven her claim, I award her the recovery of the filing fee. The tenant may make a one-time deduction of \$100.00 from a future rent

### **Conclusion**

The notice to end tenancy dated May 25, 2018 is set aside and the tenancy will continue.

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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: July 19, 2018

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Residential Tenancy Branch