



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 3, 2018 (the “Application”). The Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated September 24, 2018 (the “Notice”) and for reimbursement for the filing fee.

The Tenant appeared at the hearing with her partner. The Landlords appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlords confirmed they received the hearing package and Tenant’s evidence. The Landlords also confirmed they were able to access and view the Tenant’s digital evidence. The Tenant confirmed she received the Landlords’ evidence.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, are the Landlords entitled to an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlords and Tenant in relation to the rental unit. The tenancy started July 1, 2010 and is a month-to-month tenancy. Rent is due on the first day of each month.

The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated by the male Landlord. It has an effective date of November 30, 2018. The grounds for the Notice are that "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit". The Notice provides the name and address of the purchaser. The Tenant took no issue with the form or content of the Notice.

The male Landlord testified that he served the Notice on the Tenant September 24, 2018 by posting it to the door of the rental unit. The Tenant testified that she received the Notice September 25, 2018 and agreed it was posted to the door of the rental unit.

In relation to the grounds for the Notice, the female Landlord testified as follows. The rental unit was listed for sale and they received an offer from the purchaser. On September 21, 2018, the purchaser asked the Landlords to serve the Tenant with the Notice as he intended to live in the rental unit as of December 1, 2018.

The Landlords submitted a Contract of Purchase and Sale Addendum dated September 20, 2018 in relation to the rental unit. This document relates to the removal of a subject clause set out in the contract of purchase and sale. It states that the contract is now firm and binding. The document is signed by the Landlords and purchaser.

The Landlords submitted a letter dated September 21, 2018 signed by the purchaser asking that the Landlords give the Tenant the Notice as the purchaser will be occupying the rental unit on December 1, 2018. The letter also states that all conditions for the sale of the rental unit have been met.

The Landlords submitted a letter dated October 10, 2018 signed by the purchaser. It confirms the September 21, 2018 letter and explains the reason for the request. It confirms that the purchaser intends to occupy the rental unit as of December 1, 2018. It says that the purchaser has mentioned that he may need a roommate or caregiver in

the future to assist him given his age. It says he has no plans of renting the rental unit out. It confirms that the conditions for the sale of the rental unit have been met.

The Tenant did not take issue with the sale of the rental unit or fact that all conditions for the sale of the rental unit have been satisfied. Nor did she take issue with the fact that the purchaser provided the Landlords with a request in writing to serve the Notice on the Tenant as the purchaser intends to occupy the rental unit. The Tenant's position is that the purchaser does not honestly intend to occupy the rental unit. She pointed to a video submitted in support of her position.

The Tenant testified that the video shows the male Landlord and his friend having a discussion in the rental unit. The Tenant said the discussion was about the purchaser renting the unit to a female friend who would tell people she was his roommate. The Tenant's partner testified that the video shows the purchaser is not intending to live at the rental unit.

The Tenant testified that the following occurs during the relevant portion of the video. The friend asks the male Landlord if the purchaser is moving into the house and the male Landlord says no. The male Landlord says the female is going to claim she is a roommate of the purchaser. The friend replies that this is perfect. The Tenant was not able to point me to where in the video this portion of the conversation occurs.

I asked the male Landlord for his position on the video. The male Landlord said he did not say what the Tenant claims he said in the video. He said he told his friend the purchaser is going to move into the rental unit and that he may need a roommate in the future depending on how he is feeling.

I have reviewed the video numerous times prior to writing this decision.

### Analysis

The Notice was served on the Tenant in September and therefore the new legislation that came into force May 17, 2018 applies.

The Notice was issued under section 49(5) of the *Residential Tenancy Act* (the "*Act*"). The Tenant had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. I accept the undisputed testimony of the Tenant that she received the Notice September 25, 2018. Based on our records, I find the Tenant filed the Application on October 3, 2018, within the 15-day time limit set out in the *Act*.

Section 49(5) of the *Act* states:

- (5) A landlord may end a tenancy in respect of a rental unit if
  - (a) the landlord enters into an agreement in good faith to sell the rental unit,
  - (b) all the conditions on which the sale depends have been satisfied, and
  - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
    - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

...

Pursuant to rule 6.6 of the Rules of Procedure, the Landlords have the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The only issue before me was whether the purchaser intends in good faith to occupy the rental unit as of December 1, 2018 as stated in the letter from the purchaser provided to the Landlords. The Tenant disputed the stated intent based on the video and a discussion between the male Landlord and his friend. The male Landlord denied that the discussion was as claimed by the Tenant. I have watched the video numerous times and am unable to sufficiently hear what the male Landlord and his friend say such that I cannot determine whether the discussion is as the Tenant says it is. In the circumstances, I cannot find that the video calls into question the intent of the purchaser.

The purchaser provided a letter to the Landlords indicating he intends to occupy the rental unit. The purchaser provided a signed letter as evidence on this hearing confirming that intention. I do not find it problematic that the purchaser may have a caregiver or roommate in the future as long as the individual is not renting from the purchaser. The purchaser stated in the letter submitted that he does not intend to rent the unit out. In the circumstances, I am satisfied on a balance of probabilities that the purchaser intends to occupy the rental unit and not rent it out.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*. The Tenant did not dispute this. Further, I find the Notice contains the name and address of the purchaser as required by section 49(7) of the *Act*.

I find the effective date of November 30, 2018 as indicated on the Notice complies with section 49(2)(a) of the *Act* given the testimony of the parties.

I uphold the Notice and dismiss the Application without leave to re-apply.

Section 55(1) of the *Act* requires me to issue the Landlords an Order of Possession given I have upheld the Notice, dismissed the Application to dispute the Notice and found the Notice complies with section 52 of the *Act*. The Landlords asked that the Order of Possession be effective November 30, 2018 if issued based on the Notice. In my view, the Landlords are entitled to an Order of Possession as of the effective date of the Notice given it complies with the *Act*. I grant the Landlord an Order of Possession effective November 30, 2018.

I note that the Tenant is entitled to receive the equivalent of one month's rent payable under the tenancy agreement pursuant to section 51(1) of the *Act* if this has not already been addressed.

I also note that, if the purchaser does not follow through with the stated purpose of the Notice, the Tenant can apply for the equivalent of 12 month's rent payable under the tenancy agreement pursuant to section 51(2) of the *Act*.

I decline to award the Tenant reimbursement for the filing fee given she was not successful in this application.

### Conclusion

The Application is dismissed. The Notice is upheld and the Landlords are issued an Order of Possession. I decline to award the Tenant reimbursement for the filing fee.

The Landlords are granted an Order of Possession effective November 30, 2018. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 02, 2018

---

Residential Tenancy Branch