



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order for the Landlord’s compliance – Section 62.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Advocate made submissions and argument on behalf of the Tenant.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Are the Tenants entitled to a cancellation of the notice to end tenancy?

### Background and Evidence

The Tenant states the following: There is no written tenancy agreement for the tenancy that started in February 2006. Rent of \$913.50 is payable on the first day of each month. At the outset of the tenancy the Tenants paid \$400.00 as a security deposit. The unit is part of a duplex with the second unit beside it. On May 1, 2019 the Tenant received through registered mail a two month notice to end tenancy for landlord’s use dated April 26, 2019 (the “Notice”). The reason stated on the Notice is that all the

conditions for sale of the rental unit has been satisfied and the purchaser has asked the landlord in writing to give this notice because the purchaser or close family member intends in good faith to occupy the rental unit. The Notice sets out two names of the purchasers with slashes. When the Tenant received the Notice, their landlord at the time and the person who issued the Notice, informed the Tenant that the person named in this application (the "Landlord") would act as the agent for the tenancy and that the other person named on the Notice was the purchaser. The Tenant then sent a letter dated May 9, 2019 to the Landlord asking for information about the purchaser. The Landlord responded by email on May 10, 2019 without identifying the purchaser, referring only to "the new owners" and informing the Tenants that they could send "any challenging documents" to the Landlord. The Landlord did not indicate that it was also an owner. As a result of this information the Tenants were led to believe that the Landlord was only the property manager. The Tenants then sent an email dated June 4, 2019 asking for a copy of the letter from the purchaser asking for the landlord to end the tenancy and asking for reasons why the purchasers could not move into the other duplex. No response was received from the Landlord. The Tenants did a property search and found nothing indicating that the property had been sold. The Tenants have no reason to believe that the Notice is valid or that the Landlord is even a purchaser.

The Landlord states the following: The Notice was sent by registered mail to the Tenants on April 27, 2019. The Landlord is the purchaser of the entire two-unit duplex. The other unit of the duplex also contains tenants. The Landlord plans to move into the unit with its spouse and the Landlord has not sought the end of the tenancy of the other unit. The Landlord has no knowledge of the details of the tenancy other than it being a month to month tenancy. The conditions for the sale were met on April 26, 2019 and the sale of the unit will be closed on July 31, 2019 with a possession date of August 1, 2019. A letter from the Landlord asking for the landlord to end the tenancy was provided in the form of an email to the landlord. The Landlord has the documents related to the sale along with the letter for the Notice but did not provide these documents for this dispute. The Landlord did not provide these documents in response

to the Tenants June 2019 email as this hearing was coming up. The Landlord provided no supporting documentation for this dispute. The Landlord denies acting as agent for the landlord, is ill prepared for this dispute and agrees that the use of the 3<sup>rd</sup> person in the May 2019 email to the Tenants was misleading.

### Analysis

Section 49(5) of the Act provides that 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;
  - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The Landlord provided no supporting evidence of the sale of the unit. The Landlord provided no supporting evidence setting out the identity of the purchaser or purchasers of the unit. The Landlord provided no supporting evidence that the conditions for the sale of the unit were met prior to the issuance of the Notice. The Landlord provided no supporting evidence that any purchaser provided a letter to the landlord asking to end the tenancy. Further the Tenant provided undisputed and supported evidence that the Landlord, when asked who the purchasers of the unit were, referred in the third person to “the new owners” without any reference to also being a purchaser who intended to move into the unit. This tends to support the Tenants beliefs that there is no good faith intention for a purchaser to occupy the unit. For these reasons, I find on a balance of probabilities that Tenants have substantiated that the Notice is not valid. The Notice is therefore cancelled, and the tenancy continues. No submissions were made in relation

to the claimed order for the Landlord's compliance. As application under this claim only refers to the letter from the Tenants seeking clarification for the purpose in ending the tenancy and as this is no longer relevant, I dismiss this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

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: June 27, 2019

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Residential Tenancy Branch