



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

In this dispute, the tenant seeks an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to section 49(8) of the *Residential Tenancy Act* (the "Act").

The tenant applied for dispute resolution on May 10, 2019 and a dispute resolution hearing was held on June 24, 2019. The tenant's advocate, and the landlord, attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Neither party raised any issues with respect to the service of evidence and the tenant's advocate confirmed that they served copies of the evidence on the landlord in compliance with the Act.

Evidence submitted that met the *Rules of Procedure* and to which I was referred was reviewed, but I have only considered evidence relevant to the issues of this application.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

### Background and Evidence

The basic facts of the dispute are not in dispute by the parties, and those facts are as follows:

The tenancy began in January 2013 and monthly rent is \$650.00. On April 28, 2019, the landlord issued the Notice and served it in-person on the tenant on April 28, 2019. A copy of the Notice was submitted into evidence by the tenant.

On page two of the Notice, the Notice indicates that the reason the tenancy is ending is because, as indicated by a checked box:

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.

Below that statement is the purchasers' names and address.

The purchasers provided a written letter to the landlord (the seller) outlining the purchasers' intentions. The letter dated April 13, 2019 and a copy of which was submitted into evidence reads as follows:

We [purchaser's names], request that the seller [landlord's name] end the tenancy with the current tenant [tenant's name]."

Ourselves and our sons will use and live in the premisis. [sic] We will be doing an extensive renovation, as the house is in need of desperate attention, due to black mold and unlivable conditions. We will obtain the property permits when necessary. The house will become a family home.

[signed by the purchasers]

Also submitted into evidence is a copy of a Contract of Purchase and Sale (the "Contract"), which is dated April 17, 2019. On page two of the Contract there is a section, numbered 3, which reads as follows (excerpt):

3. TERMS AND CONDITIONS: The purchase and sale of the Property includes the following terms and is subject to the following conditions:

The Seller covenants and agrees to serve the existing tenant Notice to vacate the Property before April 30, 2019 and shall provide a copy of the Notice to the Buyer within 5 days of delivery of the Notice to the existing tenant.

The landlord commented that the tenant's application stated the following (which I can confirm was included in the tenant's application for dispute resolution): "I do not believe the landlord is acting in good faith." The tenant's advocate did not make submissions or raise any arguments with respect to this aspect of the tenant's application.

The tenant's advocate argued that the buyers' request cannot be a condition of the sale, and as such the Notice is invalid. The landlord submitted that he spoke with his lawyers who noted that the sale is made without conditions and unconditional. The parties' sole point of dispute is whether the manner and content of the letter and the Contract constitute a valid notice to end a tenancy.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As I explained to the parties at the beginning of the hearing, where a tenant applies to dispute a notice to end tenancy issued by their landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

In this case, the landlord issued the Notice under subsection 49(5) of the Act which reads as follows:

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 [...]

In respect of subsection 49(5)(a), while the tenant stated in his application that he did not believe the landlord was acting in good faith, the tenant's advocate did not provide submissions or make an argument as to the landlord's good faith intentions. As such, I need not further consider the matter of good faith; I conclude that the landlord entered into the agreement to sell the property in good faith.

While the tenant and his advocate raised the issue of what constitutes a "condition" on which the sale depended, and which is the basis for the tenant's dispute, there is a more important issue that I must first turn. Namely, whether section 49(5)(c)(i) of the Act was satisfied in the issuing of the Notice.

The ground on which the tenancy was being ended was that the purchasers intend in good faith to occupy the rental unit. And, while the purchasers' letter uses the phrases "will use and live" and "will become a family home," the letter also, quite explicitly, states that the purchasers intend to undertake extensive renovations because of "unlivable conditions." And, that the purchasers apparently view the renovations as being so extensive that permits will be required.

In other words, while the purchasers may at *some* point intend to occupy the rental unit, they do not intend to occupy the rental unit upon taking possession. The language of their letter indicates that they will not be occupying the rental unit but rather, will be doing extensive renovations.

Given the above, I conclude that the purchasers do not intend to occupy the rental unit as is required by section 49(5)(c)(i) of the Act. As such, I find that the Notice is invalid and is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

Having found that section 49(5)(c)(i) under the Act was not satisfied I need not consider the tenant's argument regarding the application of section 49(5)(b) of the Act.

### Conclusion

I hereby order that the Notice, issued on April 28, 2019, is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 24, 2019

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Residential Tenancy Branch