



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL-4M, FF, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property (the 4 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence. Both parties confirmed the landlord served the tenant with his submitted documentary evidence. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 4 month notice?

Is the tenant entitled to recovery of the filing fee?

Is the tenant entitled to an order for the landlord to comply?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the landlord served the tenant with the 4 month notice dated July 31, 2019 in person on July 31, 2019. The 4 month notice sets out an effective end of tenancy date of December 1, 2019 and lists the reason listed as:

Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

No permits and approvals are required by law to do this work.

The tenant was served with the 4 month notice after she refused an offer of \$4,000.00 to move-out. The tenant stated that the apartment complex was completely renovated 5 years ago. The tenant was the first and only resident in her unit. The tenants stated that after 3 months the landlord is evicting her saying that he wants the caretaker to live in the suite. The caretaker has been living in another renovated comparable suite for over a month and the tenant argues that the landlord is not acting in good faith.

The landlord has submitted a copy of a typed "Property Management Contract" dated March 1, 2019 in which the in exchange for duties performed the agreement is:

*In exchange for the above noted property management services S.E. will pay zero dollars for rent.*

*It is agreed that S.E. will move into the first suite that becomes vacant at ...*

*It is also agreed that S.E. will move into unit 305 upon vacant possession of that suite.*

*This property management contract will start May 1, 2019.*

The landlord stated as a landlord he is free to choose and select which unit will be occupied by an onsite caretaker. The landlord stated that this is a 20 suite building which he took possession of in April 2019. The caretaker began employment on March 1, 2019 and that the caretaker currently resides in #205. The landlord stated that an employment contract was made in which the caretaker chose #305 despite having never been in it. The landlord stated that the caretaker has been in a neighboring unit as well as on the roof. The landlord stated that this was the "best suite" in the rental building and that he wanted the caretaker to reside in it as per the signed employment agreement. The landlord stated that this was an incentive for the caretaker to agree to

employment. The landlord has stated that no actual renovations have been planned for the unit and that it is move-in ready.

The tenant has argued that this is not a requirement of an employment agreement and is purely a contractual responsibility of the landlord that has nothing to do with the rental unit itself. The tenant argues that there have been other units that became vacant on her floor which the landlord has renovated with the caretaker and re-rented. The tenant states that there have been several other units suitable for occupancy by a caretaker.

### Analysis

Section 49 (6) of the Act sets out that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish, renovate or repair the rental unit that requires the rental unit to be vacant.

Both parties confirmed that the landlord served the tenant with the 4 month notice dated July 31, 2019 on July 31, 2019.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

The tenant has argued that the landlord does not have a good faith intent to convert the unit and have his caretaker occupy this space.

Further 4 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* "2. Good Faith Requirement when Ending a Tenancy" helps explain this "good faith" requirement:

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...

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.

In this case, the landlord has stated that as part of an employment agreement the specific unit #305 was requested by the caretaker as part of his employment. The employment agreement is dated March 1, 2019 and began employment on May 1, 2019. The tenant has argued that there is no need to have the caretaker occupy this space as there has been several suitable units available on her floor which were renovated by the landlord and caretaker. The tenant provided undisputed evidence that the caretaker currently resides in #205 directly below the tenant and that everything is the same. The landlord has argued that #305 is the best unit in the building and that he has decided that he wishes for the caretaker to occupy this space. The tenant has argued that the caretaker has never been inside her unit and argues that the caretaker could not have expressed a desire to occupy it. The landlord has stated that the caretaker has been inside a neighboring unit and the roof and had decided on that basis.

I accept the evidence of both parties and find that the landlord has failed to provide sufficient evidence of a good faith intent to have the caretaker occupy the rental unit. Although a landlord is free to choose which unit a caretaker shall occupy, I find on a balance of probabilities that it is not likely that the landlord would choose and agree as part of an employment agreement for the caretaker to occupy the "best suite" in the rental building. I also find that it is improbable that the caretaker chose as part of the employment agreement dated March 1, 2019 that he requested as part of the employment agreement to occupy #305 despite having never seen it prior to his employment start of May 1, 2019 or working in the building. On this basis, I find that the tenant has been successful and the 4 month notice is set aside and cancelled. The tenancy shall continue.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenant to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant's application is granted. The 4 month 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 *Residential Tenancy Act*.

Dated: October 08, 2019

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Residential Tenancy Branch