



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property and to recover the filing fee from the landlords for the cost of the application.

Both tenants and one of the landlords attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in accordance with the *Residential Tenancy Act* and in good faith?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began approximately 6 years ago or more, and the tenants still reside in the rental unit. There is no written tenancy agreement, however rent in the amount of \$1,165.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$550.00 which is still held in trust by the landlords and no pet damage deposit was collected. The rental unit an apartment above a warehouse, characterized as a caretaker's suite.

The landlord further testified that on July 22, 2019 he taped to the door of the rental unit a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided as evidence for this hearing. It is dated July 22, 2019 and contains an effective date of vacancy of September 30, 2019. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse).

The landlord intends to move into the rental unit as soon as it's vacant. The landlord is no longer welcome at his family home and this will be his only place of residence; his wife left him in September and the last few months have been difficult. The landlord has been sleeping in his truck or in the warehouse. The entire building is owned by the landlord. An Affidavit Statement of the landlord's spouse has been provided for this hearing, dated September 27, 2019.

The landlord has also provided an Affidavit of another person dated September 23, 2019 who certifies that she resides at the rental address. However the landlord testified that the address in the Affidavit refers to her mailing address only. She has stayed overnight at the rental address and works for the landlord. Her belongings were moved to the warehouse on March 31, 2019 to store it anticipating that she will be residing in the rental unit with the landlord, but she currently has another apartment.

There have been 3 previous hearings with the Residential Tenancy Branch this year. In one of those hearings the landlord had testified that his son was going to move into the rental unit. That was true then, but the landlord's son found another place and it's no longer the case. Life changes, and now the landlord has good faith intent to occupy the rental unit. After the first hearing the Arbitrator cancelled the landlord's notice to end the tenancy because the landlord forgot to sign it. Another hearing was for late rent, and the Arbitrator calculated that rent was paid within 5 days. The third hearing was also about unpaid rent, but the notice to end the tenancy was cancelled because the tenant told the Arbitrator that the tenants had provided cheques that the landlord had not yet cashed.

When asked about previous attempts to end the tenancy, such as ending the tenancy for administration purposes, ending the tenancy for renovations, then for the landlord's son to move in, then to sell the building and now that the landlord will live in it, the landlord replied that he also had a realtor look at the property, and if he has to sell, he will. The landlord also testified that he video-taped the tenants to irritate them because the tenants have video-taped the landlord.

**The first tenant** (BH) testified that the landlord's story has changed. His testimony is wrong or inconsistent with prior testimony.

Copies of the Decisions of the director, Residential Tenancy Branch have been provided as evidence for this hearing as well as the notices to end the tenancy that were the subject of those hearings. The first notice to end the tenancy was effective March 31, 2019 and was heard on May 16, 2019. The landlord testified at the hearing that his son was moving in and that the delay caused considerable financial burden on his son. The same day of the hearing the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but the tenant had provided the landlord with post-dated cheques for 6 months at a time. On the advice of a lawyer, the tenant gave the landlord a replacement cheque and disputed the Notice. The hearing was on July 5, 2019, but in the meantime the landlord gave a One Month Notice to End Tenancy for Cause on May 21, 2019, also disputed by the tenants. The reason for issuing it stated "repeated late rent." The Notice was cancelled at Arbitration because the tenants were never delinquent and the landlord had post-dated cheques. When the hearing for the 10 Day Notice to End Tenancy for Cause was held, the landlord testified that he hadn't received rent for March, April or May, but in the next hearing he said he did have the cheques.

Again to irritate the tenants, the landlord sent mail belonging to the tenants back to Revenue Canada. The tenants receive GST cheques every 3 months. The landlord told the tenant that the mail was received inadvertently and sent it back to Revenue Canada, and has had all of the tenants' mail returned. He also removed the lock on the mailbox and blamed it on Canada Post saying that the tenants were "absent tenants" and there was too much junk mail in the box. The landlord texted the tenant saying that he had the lock for the mailbox. However Canada Post told the tenant they would not remove a lock unless it's a Canada Post mailbox, which it is not.

In January, 2019 the landlord texted the tenant saying he was going to use the building for Administration purposes and the tenants would have to move out. Later, the landlord texted saying renovations were going to commence on April 1, 2019 and the tenants had to move out by March 31, 2019. Then the landlord said he would charge the tenants for storage, legal costs and loss of income from his tenant, who was the landlord's son.

In April, 2019, just to irritate the tenants, the landlord kept music playing really loud and the tenant texted the landlord almost daily about it. The landlord parked on the side of the warehouse in the fire lane, assumingly to stay away from the security camera, while

the tenant walked to his car and the landlord started to yell at the tenant. The tenant drove through the Drive-thru at McDonalds and the landlord drove through the parking lot and parked on the street in front of the exit of the Drive-thru. The landlord again yelled at the tenant and raised his middle finger. The tenant called police, and the landlord admitted the behaviour and apologized to police. The landlord told police that no one had keys to the shop, but then the landlord's employee turned off the music.

On numerous occasions the landlord has texted the tenants asking why they haven't moved out.

**The second tenant** (MR) testified that the reasons for the landlord ending the tenancy keep changing. The first notice to vacate given by the landlord was not signed by the landlord, and if the tenants had moved in accordance with it, they would have been sued for moving without giving the landlord sufficient notice.

The landlord had a photograph of the tenant's GST cheque, and at no point did he say that he had it or offer to return it. The photograph showed up in evidence provided by the landlord, and that's how the tenant found out that the landlord had received it. The tenant called Revenue Canada and was told that the cheque hadn't been returned, so the tenant had to sign an Affidavit, and the cheque was re-issued.

The landlord stopped by the tenant's vehicle in April saying that the tenants had better move out or Bailiffs were coming. It was an attempt to intimidate, but it's harassment. The landlord threatened it again, but the tenants had a lawyer present who told the landlord that he needed a Writ of Possession, or it would be theft.

At first the tenants didn't monitor the pattern of events, but the story keeps changing, from what looks like a "reno-viction," then became moving family into the rental unit.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. Further, in the case of a notice to end a tenancy for landlord's use of property the landlord must be able to demonstrate good faith intent to use the rental unit for the purpose contained in the notice. In this case, the reason for issuing the Notice and good faith intent are in dispute.

With respect to good faith, the landlord did not dispute the testimony of the tenants that the landlord has attempted to have the tenants move out by:

- issuing a Two Month Notice to End Tenancy for Landlord's Use of Property which was effective March 31, 2019 claiming that his son was moving into the rental unit;
- giving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities the same day as the hearing for the dispute of the previous Two Month Notice to End Tenancy for Landlord's Use of Property;
- giving a One Month Notice to End Tenancy for Cause on May 21, 2019 claiming repeated late rent which was unsubstantiated at dispute resolution;
- playing music loud to annoy the tenants;
- returning the tenants' mail rather than telling the tenants that he had their mail;
- threatening the tenants with charges for storage, legal costs and loss of income;
- telling the tenants that a bailiff was going to move them out without obtaining a Writ of Possession; and
- changing the reasons for ending the tenancy for landlord's use of the property, such as for administration purposes, renovations, his son would be moving in, then for selling the property, and now for the landlord to live on the property.

The landlord testified that he and his spouse separated in September, 2018, which in itself would give rise to a legitimate reason for ending the tenancy so that the landlord could occupy the rental unit. I have also reviewed the statement of the landlord's spouse, which is not a sworn Affidavit, but signed in the presence of a Notary Public, and states that due to marital conflicts, the landlord is not residing with her, and, "If or until these matters are legally settled this statement remains in effect." The statement of the landlord's employee, again not sworn, but signed in the presence of a Notary Public states that her current "address of residence" is the rental unit. It doesn't say it's a mailing address, but address of residence. It mentions nothing about any other address of residence or her intention to move into the rental unit with the landlord.

The landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property effective March 31, 2019 citing that his son would be moving into the rental unit. I also consider the undisputed evidence that the landlord moved belongings of the employee of the landlord to the property that day. The landlord testified that the employee will be residing in the rental unit with the landlord, but I find it just as likely, given the timing of events, that the employee will be residing in the rental unit. I am also satisfied that the landlord deliberately withheld the tenants' GST cheque, perhaps in an attempt to cause financial hardship to the tenants and reason to end the tenancy for unpaid rent. Given the number of attempts the landlord has made, by giving notice or by other means, the

landlord has not demonstrated good faith intent. Therefore, I cancel the Two Month Notice to End Tenancy for Landlord's Use of Property.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants in that amount, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it by enforcement proceedings pursuant to the *Court Order Enforcement Act*.

### Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 22, 2019 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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 11, 2019

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Residential Tenancy Branch