



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1537 Burnaby Street Nominee  
Ltd and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** CNL, FF

### **Introduction**

This hearing dealt with the tenant's application for dispute resolution, pursuant to sections 49 and 72 of the *Residential Tenancy Act*. The tenant applied to cancel a notice to end tenancy for landlord's use of the property. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony and to make submissions. The tenant attended the hearing and was accompanied by legal counsel. The corporate landlord was represented by the owner and legal counsel. The landlord's witness also gave testimony at the hearing. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be Decided**

Has the landlord served the notice to end tenancy in good faith?  
Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The background facts are generally undisputed. The tenancy started on February 01, 2007. A copy of the tenancy agreement was filed into evidence. The monthly rent is \$1,300.00 due on the first of each month. The rental unit is a penthouse located on the top floor of a building with a total of 24 rental units. There are 4 flights of stairs to the rental unit. There is no elevator in the building.

The current landlord is a corporation owned by JR (referred to as the landlord in this decision). The landlord stated that he purchased this building in May 2020 with intentions of providing his father with the penthouse as living accommodation.

The landlord testified that due to the Pandemic, he stalled serving the notice to end tenancy for landlord's use of property on the tenant. On July 31, 2020, the landlord served the tenant with a two-month notice to end tenancy for landlord's use of property, to be effective on September 30, 2020. The reason the landlord gave the notice to the tenant is described as:

*The landlord is a family corporation and a person owning voting shares in a corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

The tenant disputed the notice in a timely manner on the grounds that the notice to end tenancy was not served in good faith.

The parties agreed that they had attempted to resolve this dispute prior to the hearing. The tenant stated that he offered to move out of the penthouse into a smaller two-bedroom rental unit in the building, at the same rent. The tenant stated that there were two-bedroom units available in June, July and August 2020. The tenant filed copies of advertisements of the availability of these rental units, to support his testimony.

The landlord agreed that the tenant had offered to move into a two-bedroom unit at the same rent and he had accepted the offer on condition that the tenant paid full market rent. The landlord added that market rent was not the only reason he declined the tenant's offer. He stated that the tenant had caused damage to the penthouse and that the relationship between the parties had soured.

The tenant denied having caused damage to the penthouse and stated that the current condition of the penthouse was a result of poor maintenance and a prior untreated mouse infestation in the entire building. The tenant stated that he has correspondence between himself and the previous landlord, which document his multiple requests for maintenance and pest control treatments. The tenant stated that the current condition of the rental unit was a result of poor maintenance through out his tenancy of 13 years under the previous landlord.

The landlord stated that he purchased the building because he was very interested in the penthouse and the view it offered. He also wanted to use it as accommodation for his 69-year-old father and his father's girlfriend.

The tenant added that the landlord is acting in bad faith because after having paid approximately 11 million for this property, it is unlikely that he would allow his 69-year-old father to occupy a unit which is in such poor condition.

The landlord stated that the unit requires minor repair, a coat of paint and some cleaning and it will be ready for his father to move in. The tenant referred to his evidence which contains photographs that depict the condition of the rental unit. The photographs show that the unit is poorly maintained and is in need of significant repair and cleaning.

The tenant also pointed out that the building has no elevator and there are 4 flights of stairs to get up to the penthouse. The landlord's father attended as a witness and stated that he has no mobility issues but agreed that he has not been inside the rental unit. He testified that he has seen photographs of the unit and has heard about the view from his son. The landlord's father also stated that he would be paying rent to his son in the amount of at least \$1,700.00. The current rent that this tenant pays is \$1,300.00.

### **Analysis**

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove they are acting in good faith. The landlord stated that his father would like to move into this unit because it has a great view and is bigger than the basement suite he currently rents from his cousin.

Based on the testimony of both parties and the documents filed into evidence I find as follows:

- The landlord wants to rent the penthouse to his father at a rent of approximately \$1,700.00 which is considerably more than what this tenant is paying
- The landlord's father is 69 years old and since the building does not have an elevator, the landlord's father would have to walk up 4 flights of stairs to access the penthouse.
- The landlord's father has not viewed or visited the rental unit
- The photographs indicate that the penthouse is in need of significant repairs and cleaning
- The tenant offered to downsize to a two-bedroom unit without a view at the same rent and the landlord wanted market rent

Based on the above, I find that the landlord's father has not viewed or visited the rental unit and has based his decision to move into the rental unit on photographs and a description of the unit from his son. The photographs filed by the tenant, show that the unit is in extremely poor condition and contrary to what the landlord stated, based on the photographs, I find that the unit is in need of significant repair, cleaning and replacement of flooring, washroom fixtures, kitchen cabinets etc.

In addition, access to the unit is a climb of four flights of stairs and is physically considerably more demanding than access to the basement suite that the landlord's father currently occupies. The landlord testified that his father has no mobility issues at age 69 but did not file any documents to support his testimony. The physicality of his father's girlfriend was not brought up during the hearing

Finally, the landlord had the opportunity to get possession of the penthouse by moving the tenant into a smaller two-bedroom unit at the same rent and chose not to.

Based on the above, I find on a balance of probabilities that it is more likely than not that the landlord wants to end this tenancy in order to repair and clean the rental unit and lease it for a higher rent. If the landlord wanted to house his father in the rental unit, he could have accepted the tenant's offer to move into an available smaller unit at the same rent. Accordingly, I find that it is possible that the landlord was financially motivated to serve the notice to end tenancy and therefore I find that the landlord has not met the good faith requirement of the legislation and that the notice to end tenancy must be set aside.

Since the tenant has proven his claim, I award him the recovery of the filing fee. The tenant may make a one-time deduction of \$100.00 from a future rent

### **Conclusion**

The notice to end tenancy dated July 29, 2020 is set aside and the tenancy will continue.

The tenant may make a one-time deduction of \$100.00 from a future rent

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: September 27, 2020

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Residential Tenancy Branch