



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, DRI, LRE, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant disputing a rent increase, and seeking the additional following relief:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and the landlord was accompanied by her spouse, who is also a landlord, but did not testify or take part in the hearing. The landlord and the tenant each gave affirmed testimony and the landlord called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

At the commencement of the hearing I advised the parties that the Rules of Procedure require that multiple applications contained in a single Application for Dispute Resolution must be related to the primary dispute, which in this case is the application for an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property. The landlord agreed to an order limiting the landlord's right to enter the rental unit except in accordance with the *Residential Tenancy Act*, which states as follows:

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The tenant's applications disputing a rent increase and for an order that the landlord comply with the *Act*, regulation or tenancy agreement are not related to the Two Month Notice to End Tenancy for Landlord's Use of Property, and I dismiss those claims with leave to reapply.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence related to the Two Month Notice to End Tenancy for Landlord's Use of Property has been reviewed and is considered in this Decision.

#### Issues 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*?
- Has the landlord established good faith intent to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property?

#### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on October 1, 2009 and reverted to a month-to-month tenancy after March 31, 2010, and the tenant still resides in the rental

unit. Rent in the amount of \$1,200.00 was originally payable on the 1<sup>st</sup> day of each month, which has been increased over time and is now \$1,492.00 per month, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$600.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is described as a basement suite, and the landlords reside in the upper level of the home. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on August 9, 2020 the landlord posted a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) to the door of the rental unit. A copy has been provided for this hearing and it is dated August 9, 2020 and contains an effective date of vacancy of November 1, 2020. 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 close family member that will occupy the unit is the child of the landlord or landlord's spouse.

The landlords' son and his wife are sadly going through a separation and the landlords' son needs to move into the rental unit. His wife is staying in the marital home, and they have 2 daughters who will be staying half the time. The rental unit has 2 bedrooms, and the landlords' son is currently renting a small 1 bedroom basement suite. If the landlords' son didn't need the rental unit, the landlords would not require the tenant to move out, but it's an emotional time for the landlords' family. The landlords need to look after him and his family during this time.

**The landlord's witness** is the landlords' son and testified that he intends to move into the rental unit, hopefully as soon as possible. The witness is separating from his wife, and the witness is currently running 2 households. The witness moved out of the marital home in July, 2020 and is currently in a 1 bedroom suite. Trying to work with 2 teenagers in a 1 bedroom suite is not working out and causing more problems with the separation. The kids are also having trouble staying in a small suite. The suite in the landlords' home has 2 bedrooms and the kids will share a room.

The witness spoke to the tenant telling him that the witness was considering moving in, and asked the tenant not to tell his parents because at that time they didn't know about the separation.

**The tenant** testified that he doesn't feel the landlords have good intent.

In 2016 when there were 0% rentals available the landlords told the tenant that they wanted the tenant to move out so they could rent on Air BNB, and that they had a contractor to renovate. The tenant found out the contractor was their son, who is not certified. The tenant has provided a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property dated August 10, 2016 effective on October 31, 2016. The reason for issuing it states: "The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlords provided a number of new tenancy agreements for the tenant to sign and the tenant told the landlord that a lawyer said they were illegal and advised the tenant not to sign. The landlord was angry and asked why the tenant would go to a lawyer. Copies of tenancy agreements have been provided for this hearing:

- a fixed-term tenancy commencing on October 1, 2009 and ending on March 31, 2010 which may continue; for rent in the amount of \$1,200.00 per month; signed by the landlord and by the tenant on August 31, 2009;
- a fixed-term tenancy commencing on November 1, 2016 and ending on June 30, 2017 after which the tenant must move out of the residential unit; for rent in the amount of \$1,400.00 per month; signed by the landlord on October 12, 2016 and by the tenant on October 15, 2016;
- a fixed-term tenancy commencing on July 1, 2017 and ending on August 31, 2017 and at the end of that time the parties may agree to enter into a new tenancy agreement or on a month-to-month basis; for rent in the amount of \$1,400.00 per month, but is not signed by a landlord or a tenant;
- a fixed-term tenancy commencing on September 1, 2017 ending on August 30, 2017 at which time the tenant must move out off the residential unit; for rent in the amount of \$1,500.00 per month, but is not signed by a landlord or a tenant. It also contains an Addendum specifying that the landlords require 2 months notice to vacate, or 1 month notice and 1 month of rent (in lieu of notice).

Also provided are 2 Notices of Rent Increase. The first is signed by the landlord on May 26, 2018 stating that the current rent of \$1,400.00 is increased by \$56.00 to \$1,456.00 per month effective September 1, 2018. The second is signed by the landlord on October 15, 2019 and increases rent from \$1,456.00 per month by \$36.00 to \$1,492.00 per month effective on February 1, 2020.

The tenant testified that the evidence shows the landlords' attempt to coerce the tenant to get rid of him, and evidence of trying to ren-o-vict the tenant and gouging the tenant on

increases. The tenant sees this Notice to end the tenancy as a ploy to renovate and get more money for it.

The tenant has also provided 2 audio recordings as evidence for this hearing. The tenant testified that the landlord slammed the door in the tenant's face while doing an inspection. When he showed up, he didn't have a mask or gloves, and mocked the tenant for it. He showed up with his son, and the tenant asked that only 1 person enter at a time due to COVID-19 rules and the landlord was angry, knocked a painting off the wall and there was a verbal altercation. The landlord was very arrogantly trying to make the tenant feel that he has power over the tenant, as usual.

#### SUBMISSIONS OF THE LANDLORD:

The landlords' son is a single dad with 2 kids and is currently supporting 2 households. Living in a 1 bedroom suite causes him a lot of stress as well as his kids, and he needs to move in. The landlords want to support his family.

#### SUBMISSIONS OF THE TENANT

The tenant is a single dad raising 2 kids. It is a very unusual time with COVID-19; uncertainty and income is restricted. To move now is not wise for the tenant or his kids, which is exactly what the tenant expressed to the landlords' son.

#### 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*. Further, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice.

I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*.

With respect to the reason for issuing it, I have reviewed all of the evidentiary material of the parties, and I have no reason to disbelieve that the landlords' son will be moving into the rental unit. I understand the tenant's position, that the landlords have made attempts to have the tenant move out by one means or another, however circumstances change. The tenant does not disbelieve that the landlords' son has separated from his wife, and I accept that testimony. The *Act* permits a landlord to end a tenancy for that very reason, and therefore I must dismiss the tenant's application for an order cancelling the Notice.

The *Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on November 1, 2020, which is the effective date contained in the Notice.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the filing fee.

### Conclusion

For the reasons set out above, I hereby order the landlords to comply with Section 29 of the *Residential Tenancy Act* for the duration of this tenancy, by consent.

The tenant's application for an order cancelling a notice to end the tenancy for landlord's use of property is hereby dismissed without leave to reapply.

The tenant's application disputing a rent increase is hereby dismissed with leave to reapply.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on November 1, 2020.

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: September 29, 2020

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Residential Tenancy Branch