



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNL

### **Introduction**

This Hearing dealt with the Tenant's application cancel a *Notice to End Tenancy for Landlord's Use* (the Notice) issued September 30, 2012.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was determined that the Landlord was served with the Notice of Hearing documents by registered mail sent October 12, 2012. It was also determined that the Landlord served the Tenant with her documentary evidence on November 9, 2012.

### **Issue to be Decided**

Should the Notice issued September 30, 2012, be cancelled?

### **Background and Evidence**

This tenancy began in January, 2012. The rental unit is a one of four suites in the rental property. The rental unit is located on the main floor. The Landlord resides in one of the suites, which is also located on the main floor. The other two suites are tenanted and are located in the basement and on the floor above the Tenant.

The Notice indicates that the rental unit will be occupied by the Landlord, the Landlord's spouse, or a close family member. The Tenant was served with the Notice on September 30, 2012.

The Tenant testified that he was previously served with two notices to end the tenancy for cause, one in April and the other in July, 2012. The Tenant disputed both of these notices and was successful in his applications. The Tenant questioned the good faith intent of the Landlord, stating that he was served with the Notice on September 30, 2012, just 20 days after the last notice to end tenancy for cause was cancelled.

The Landlord testified that she was very ill on September 2, 2012, and fainted twice in her bathroom. She stated that her Doctor advised her that she should have someone to take care of her. The Landlord stated that her brother and four other people are living in the basement suite of the rental property but that it is too far away in the event of an emergency. The Landlord stated that her brother is going to move into the rental suite which is on the same floor as the Landlord's suite.

The Tenant stated that he overheard the upstairs occupant telling the Landlord that he has found a new place for the end of November, 2012, and that the Tenant offered to move into the upstairs suite but the Landlord refused to allow him to do so.

The Landlord stated emphatically that the Tenant cannot move into the suite upstairs and that she is concerned that she will be liable if the Tenant falls down the stairs because he has a disability.

### **Analysis**

The Tenant called into question the Landlord's good faith intent in issuing the Notice and therefore the onus is on the Landlord to provide sufficient evidence that: she truly intends to end the tenancy for the reason(s) provided on the Notice; and that she does not have another purpose or ulterior motive for ending the tenancy.

Based on the testimony of both parties, on the balance of probabilities, I find that the Landlord has an ulterior motive for ending the tenancy. The Landlord provided no documentary evidence that her health requires her brother to move from the basement into the Tenant's suite immediately or at all. Furthermore, there is another suite in the rental property that will be vacant on November 30, 2012, and the Landlord has flatly refused to allow the Tenant to move into that suite.

Therefore I find that the Notice is not valid. **The Tenant's application is granted. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.**

The Landlord is cautioned that continuing to serve the Tenant with invalid notices to end tenancy may be determined to be a form of harassment.

### **Conclusion**

The Notice to End Tenancy issued September 30, 2012, is cancelled. The tenancy

remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Landlord is cautioned that continuing to serve the Tenant with invalid notices to end the tenancy may be determined to be a form of harassment.

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: November 22, 2012.

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Residential Tenancy Branch