



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "notice") issued on November 1, 2013.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a notice Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving the notice was issued for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Should the notice to end tenancy be cancelled?

### Background and Evidence

The tenancy began on April 1, 1999.

The parties agreed that a 2 Month Notice to End Tenancy for Landlord's use of Property was served on the tenant indicating that the tenant is required to vacate the rental unit on January 31, 2014.

The reason stated in the notice to end tenancy was that;

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord testified that they purchased the property approximately 14 years ago, with the intent that they would use the premises when they retired as they currently live outside the province.

The landlord testified that they have now retired and would like to use the property for their own use and enjoyment. The landlord stated they are golfers and this area designed as a golfer's community. The landlord stated that they also have children and grandchildren that would also like to use the property for their enjoyment.

The landlord testified that the tenant offered a proposed rent increase, which was refused as money was not the issue. However, later they considered that offer, however when they spoke to the tenant he indicated that offer was on the condition that he could stay for the next two years. The landlord stated they were not prepared to enter into a 2 year contract and decline to accept the offer.

The landlord testified that they also considered selling the residence and had a real estate agent do an assessment in the spring, however it was determined that selling was not an option at this point in their lives.

The landlord testified that if the tenant is not successful with their application, that they are agreeable to extend the effective vacancy date to April 30, 2014.

The tenant testified that the landlord has no intention on living in the premises as they live in another province. The tenant stated that the landlord told his daughter that they had intended to sell the place eventually.

The witness testified that the landlord does not plan to live in the premises as stated in the notice. The witness stated in May 2013, she contacted the landlord to ask her to consider a two year lease and that offer was refused. The witness stated during that conversation the landlord asked her if she would like to purchase the property, which that offer was rejected. The witness stated that the landlord sent the tenant a letter dated June 1, 2013 that they intended to sell the property. Filed in evidence is a copy of the June 1, 2013.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case the tenant and the tenant's witness claimed the landlord does not intend to live in the premises as their primary residence was located in another province and as a result would not be occupying the premises as stated in the notice.

As the meaning of occupy was questioned, I have refer to the Black's Law Dictionary sixth edition for the legal meaning of occupy.

*Occupy. To take or enter upon possession of; to hold possession of; **to hold or keep for use**; to possess; to tenant; to do business in; to take or hold possession.*

[Emphasis added]

The evidence of the landlord was the property was purchased 14 years earlier with the intent that when they retired and that they use the property. The evidence of the landlord was that they have now retired and want to keep the property and use it for their own personal use. I find that the landlord has met the definition of occupy.

However, when a tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the landlord to prove the two part test as follows:

1. The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
2. The landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

The evidence of the tenant's witness was that they believe that the landlord intends to sell the property as suggested by the letter of June 1, 2013. The evidence of the landlord was that they did bring a real estate agent to the premises to do an assessment; however, after that was completed selling was no longer an option at that point.

The evidence of the landlord was that they had always intended that this property would be used for their retirement pleasure and also to have their children and grandchildren use the premises for their recreational pleasure.

While the letter of June 1, 2013, may have indicated that they intended to sell the unit, however, after the real estate agent attended the premises the landlord no longer felt selling was an option, which would be reasonable if the assessment of the premises was not satisfactory to the landlord.

I accept the landlord evidence that they truly intend to use the premises for the purpose stated in the notice and have no ulterior motive.

In light of the above, I find the 2 Month Notice to End Tenancy for Landlord's use of Property, issued on November 1, 2013, valid and the tenancy will legally end. However, during the hearing the landlord agreed to extend the effective vacancy date to April 30, 2014.

As a result, I dismiss the tenant's application and the tenancy will legally end on April 30, 2014.

#### Conclusion

The tenant's application is dismissed. The tenancy will legally end on April 30, 2014.

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: December 24, 2013

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Residential Tenancy Branch

