



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a 2 Month Notice to End Tenancy for Landlord's Use. Both parties appeared and had an opportunity to give affirmed testimony.

The landlord's first name had been misspelled on the Application for Dispute Resolution. With the consent of both parties the Application was amended to correct the spelling of the landlord's name. The correct spelling is used in this Decision.

The tenant had submitted a written statement but had not served the document on the landlord. As it had not been served on the other party the statement could not be accepted into evidence or considered in the making of this Decision. The only written evidence filed by the landlord was a copy of the tenancy agreement and a copy of the notice to end tenancy.

### Issue(s) to be Decided

Is the 2 Month Notice to End Tenancy for Landlord's Use dated May 21, 2016 valid?

### Background and Evidence

The tenant and her ex-husband first moved into this rental unit on November 1, 2011. The tenant and her husband separated as of April 1, 2016. In mid-March the landlord and the tenant signed a new tenancy agreement effective April 1, 2016. Pursuant to that agreement the monthly rent was \$800.00 and was due on the first day of the month. It is a month-to-month tenancy.

Since the start of the new tenancy there has been a dispute between the landlord and the tenant as to whether water is to be included in the rent.

On May 21, 2016 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use. There were two reasons stated on the notice:

- 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 has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant said she found the notice on her door on May 31. The landlord's agent was not sure what date the notice was posted; she said it was before the end of the month. This application for dispute resolution was filed on June 8, 2016.

The first witness for the landlord was his handyman. This gentleman said he would speak for the landlord as the landlord often had difficulty communicating on the telephone. However, that landlord spoke so frequently at the beginning of this witness' testimony that I swore the landlord in and heard the two gentlemen together.

The landlord's testimony is that he is 78 years old. He owns multiple properties in this small community. Since last July he has sold two houses. In April he bought another house with the intention of renovating and selling it. That house is a former grow-op and is uninhabitable until it is remediated. The landlord testified that buying and selling is his life.

The landlord also testified that it is his intention to sell all his properties in this community and move elsewhere.

The landlord's evidence is that he is currently living in a manufactured home that he owns but he does not like living in it. He wants to live in a house.

The landlord testified that he has someone who is prepared to buy the manufactured home if he is successful in this hearing. When the manufactured home sells he will have nowhere to live.

The landlord testified that he tried to sell this unit but the tenant restricted access to the unit and refused to allow photographs of the unit to be taken. He said that the tenancy was a month-to-month tenancy because he wanted to sell the unit.

The tenant testified that she was prepared to grant access to the rental unit but only on her days off when she could be present. She also acknowledged that she would not allow photographs of the interior of the unit. She said this was a privacy issue. This is a

small community and she did not want everyone in town knowing what she had in her home. She said there are lots of rental properties advertised without photographs.

The landlord testified that he has always given written notice of entry; the tenant says he never has.

Throughout their testimony the landlord and his handyman kept referring to a list of deficiencies that tenant had given the real estate board about the unit. They said the letter was dated February 12, 2016. Clearly, the landlord was upset by this action and he mentioned it over and over again.

The tenant testified that the landlord has a poor reputation in this community so when the unit was first listed for sale she gave the realtor a list of the issues she thought should be disclosed to any potential purchaser.

No one filed a copy of this document as evidence.

The landlord testified that he is going to move into the unit and fix everything on this list. The tenant and her ex-husband testified that many of the items on the list such as the cracks in the foundation, leak in the roof, and the septic system are potential problems for the future; not major repairs that are required immediately. However, the tenant did spend some time listing the deficiencies of the unit.

All parties acknowledged that no application for dispute resolution claiming repairs had ever been filed by the tenant or the tenant and her ex-husband in the past. The tenant testified that they never pressed the landlord about repairs because he made it so unpleasant when the topic was raised. The ex-husband testified that he brought required repairs to the landlord's attention and was more successful getting at least some repairs done if he used a cooperative and conciliatory approach. He testified that an application for dispute resolution was too confrontational an approach in such a small town.

The landlord testified that he had only been in the rental unit once and that was just recently.

The landlord's property manager testified that she had been in the unit just before the new tenancy agreement was signed to see what repairs were required. In her opinion the bathrooms were in poor condition and needed to be repaired. She testified that she did not think they were safe in their present condition. The tenant testified that they

never used the downstairs bathroom and the upstairs bathroom was in the same condition as when they moved into this unit.

Both the tenant and her ex-husband testified that they were not convinced that the landlord had sold all his other properties. They also pointed out that there was not evidence that the landlord had obtained any permits to do any work.

The tenant testified that over the years the landlord has made many comments about how he does not like renting to women and to single women in particular. She says that since she and her husband separated the landlord's attitude towards her and her tenancy have changed markedly. Her ex-husband acknowledged that he had heard the landlord make inappropriate comments about women. The landlord did not respond to those allegations.

#### Analysis

First of all, the two reasons offered for ending this tenancy are inherently contradictory. The landlord says he intends to personally occupy the rental unit and he intends to repair the unit in a manner that requires the unit to be vacant. Clearly, it cannot be both.

Section 49 of the *Residential Tenancy Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

*Residential Tenancy Policy Guideline 2: Ending a Tenancy Agreement: Good Faith Requirement* defines "good faith" as an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

The *Guideline* goes on to explain that if the evidence shows that , in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive then the questions as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The *Guideline* requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for end the tenancy.

The landlord's evidence did not provide a clear picture of his intentions.

On the one hand he says he intends to sell everything and move out of town. On the other hand, he just bought another property in this community.

On the one hand he says he want to fix the unit. On the other hand he has no history of fixing anything; only had an inspection and assessment conducted this spring; and has not made any attempt to do any of those repairs since that inspection.

On the one hand he says he does not like living in the manufactured home and wants to live in a house. On the other hand, he has sold two houses since he moved into the manufactured home.

There is no evidence that suggests the landlord intends to live in this unit and make it is his home. He has had it listed for sale and many of his complaints about the tenant really relate to the obstacles he feels she put in the way of a successful sale of the property.

It is also noteworthy that this notice to end tenancy was not served until after the parties stated arguing about the water bill.

All in all, the landlord's own evidence does not establish, on a balance of probabilities, that the landlord intends to occupy the unit for any significant period of time.

With regard to the second reason stated on the notice there is no evidence that the landlord intends to demolish the unit. Further, there was inadequate evidence as to whether the repairs the landlord intends to make require the unit to be vacant while they are being made.

I accept the property manager's testimony that the bathrooms should be repaired. However, vacant possession is not required to renovate bathrooms.

The landlord did not provide a complete list, either orally or in writing, of the repairs he intends to make; any documentation as to whether any of these proposed repairs require permits and, if so, whether these permits have been obtained; and no indication of the arrangements he has made, such as hiring a contractor or ordering materials, for having these repairs made. Further, many of the repairs that were mentioned by the parties such as fixing the roof and repairing the septic system do not require the rental unit be vacant while they are made.

I find that the landlord has not established either of the reasons stated on the Notice to End Tenancy. Accordingly, the 2 Month Notice to End Tenancy for Landlord's Use dated May 21, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy for Landlord's Use dated May 21, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

As the tenant has been successful on her application she is entitled to reimbursement from the landlord of the \$100.00 fee she paid to file it. Pursuant to section 72(1) that amount may be deducted from any rent payment due to the landlord.

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: July 25, 2016

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Residential Tenancy Branch

