

2. Ending a Tenancy Agreement: Good Faith Requirement

Jan-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² allow the landlord to end a tenancy agreement if the landlord intends, in specified instances to change the use of the residential unit or manufactured home park site.

The specified circumstances in the Residential Tenancy Act are as follows:

- the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent;³
- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit;⁴
- a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit;⁵
- the landlord enters into an agreement in good faith to sell the rental unit.^{6,7}
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
- the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:⁸
 - (a) demolish the rental unit;
 - (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - (c) convert the residential property to strata lots under the *Strata Property Act*;

1 *Residential Tenancy Act* ss. 48(1)(c), 49(3), (4), (5)(a), (5)(c)(i) (ii), (6)

2 *Manufactured Home Park Tenancy Act* ss. 41(1)(c), 42(1)

3 RTA s. 48(1)(c)

4 RTA s. 49(3)

5 RTA s. 49(4)

6 RTA s. 49(5)(a)

7 RTA s. 49(5)(c)(i)(ii)

8 RTA s. 49(6)

2. Ending a Tenancy Agreement: Good Faith Requirement

Jan-04

- (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

The specified circumstances in the Manufactured Home Park Tenancy Act are as follows:

- the landlord intends in good faith to rent or provide the manufactured home site to a new caretaker, manager or superintendent.⁹
- the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park.¹⁰

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive

⁹ MHPTA s. 41(1)(c)

¹⁰ MHPTA s. 42(1)