



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNE

### Introduction

This matter dealt with an application by the tenants to cancel a Notice to End Tenancy because their employment with the landlord has ended.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the landlord on November 18, 2010.

The landlords and their lawyer appeared and the tenants and two witnesses appeared. All Parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Preliminary Issues

The tenants have asked for an adjournment of this hearing until after December 13, 2010 when a General Meeting will be held to discuss the tenant's employment termination with the owners of the units and the Strata Council. The tenants state they did not receive the landlord's evidence package until November 29, 2010 and require more time to prepare their response. The landlord opposes this request for an adjournment as the information contained in their evidence package were documents already in the tenants possession with the exception of the new employees contract. The landlord also opposes the request



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for adjournment as they require vacant possession of the rental unit to house their new employee.

I have reviewed this adjournment request and it is my decision that the hearing will continue today and the tenants request for an adjournment is denied.

## Issues(s) to be Decided

Are the tenants entitled to cancel the Notice to End Tenancy?

## Background and Evidence

Both parties agree that this tenancy started on July 01, 2007, after the tenants were employed by the Strata Council (landlords) as resident managers. The tenants pay a reduced rent for their unit of \$600.00 per month which is due on the 1<sup>st</sup> day of each month.

The landlords state that the tenant's employment contract was terminated on October 30, 2010 due to structural reorganisation with their position and duties. This decision was made by the Strata Council and is a legal duty of the Strata Council to make this decision. The tenants were served Notice to end their tenancy on this date and were given four weeks pay in lieu of Notice. The One Month Notice served states: tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee. The Notice gives an effective date to end the tenancy as of November 30, 2010.

The landlord testifies the tenant's contract states that if their employment is terminated for any reason, they will be required to vacate their suite. The landlords have provided a

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copy of this contract of employment. The landlord states they have employed another resident caretaker in this position starting from November 02, 2010 and he is presently residing in a guest suite at the building and has his belongings in storage. The landlords state they require possession of the tenants unit for their new employee.

The tenant's witness who is an owner at the property testifies that the tenants were improperly dismissed and the owners were not consulted in this matter prior to this decision being made. He states as owners they have a right to question this dismissal and overturn it under the Strata Act. A review of the decision has been requested and a General Meeting has been arranged to review the decision of the Strata Council. He states they are confident this dismissal will be overturned at the general meeting to be held on December 13, 2010.

The tenants second witness who is also an owner at the property, states the tenants have been dismissed under the guise of restructuring. He contends that if this was legitimate restructuring then no one else should have been hired. He states he will also be challenging the landlord decision to dismiss the tenants at the General Meeting.

The tenants state they do not accept the dismissal, they have not accepted the Notice to End Tenancy and request that it is cancelled. They also state they have not accepted the four weeks money in lieu of notice and have paid their rent for December to the landlords who have chosen not to cash the cheque.

The landlords argue that the tenants have been dismissed and as such the Notice to End Tenancy should be upheld and they request an Order of Possession be issued. The landlord states that even if the tenants are successful at the meeting on December 13, 2010 they would need to be re-hired and terms of their contract would have to be negotiated. The landlords lawyer states the tenants have accepted that their

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employment has ended as they have applied for Employment Insurance. The Strata Council is elected to oversee all matters pertaining to the Strata property which includes hiring property managers and terminating their employment when required.

The landlord states the new manager was hired as a relief manager while the tenants were on vacation. During that time it became clear that one person could do the same job that two people were doing and this is why this person has been hired and the tenant's employment terminated. This way the property will only have to hire a part time assistant manager to support the new caretaker and the property will have seven days a week coverage.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. A landlord is entitled to serve a tenant with a Notice to End Tenancy when the tenants' employment has ended pursuant to s. 48 of the Act. The burden of proof falls to the landlord to provide evidence that the tenant's employment has been legally ended in order for the Notice to be upheld.

While I accept that there are ongoing issues with the way this employment has been ended the fact remains that the tenant's employment in this case has been terminated by the landlord effective on October 30, 2010 and a Notice was issued on that date for the tenancy to end on November 30, 2010.

I do not have jurisdiction to deal with employment issues and my decision in this matter is governed by the *Residential Tenancy Act*. It is my decision that the Strata Council does have the authority to terminate employment as they have been elected to act as the Council for the owners in making decisions for the Strata property.



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Consequently, I find the tenant's application to cancel the Notice is dismissed as their employment has ended on October 30, 2010. The landlords are entitled to an Order of Possession.

As there is a pending General Meeting to be held on December 13, 2010 to discuss the reinstatement of the tenant's employment I will defer the effective date of the Order of Possession so it becomes effective after the date of the General Meeting in the event the tenants employment is reinstated. Therefore, the effective date of the Order of Possession will be December 15, 2010.

## Conclusion

The tenant's application is dismissed. The One Month Notice to End Tenancy for end of employment will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on December 15, 2010. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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 03, 2010.

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Dispute Resolution Officer