



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Maion Apts Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants' application to cancel a One Month Notice to End Tenancy for End of Employment and to recover the filing fee from the landlord for the cost of this application.

The tenant, a person assisting the tenant, the landlord and Legal Council for the landlord attended the conference call hearing. The landlord and tenant gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Preliminary Issues

The tenant requested an adjournment of the proceedings today and requested that the hearing be reconvened at a face to face hearing. The tenant testifies that he has hearing difficulties and has provided evidence to support this. During the initial conversations with the tenant the tenant was able to hear the questions put to him both by the Arbitrator and Legal Council for the landlord. Legal Council for the landlord stated that she had had lengthy telephone conversations with the tenant in which the tenant could hear Legal Council perfectly well. The landlord also testified that the tenant was able to conduct telephone conversations without any difficulties. The tenant testifies that

he had written to the landlord and requested the landlord agree to a face to face hearing. The landlord declined to agree with this request. The tenant did not ask the Residential Tenancy Office for a face to face hearing when the tenant filed this application.

The other tenant named on the application was not present at the hearing and when asked if that other tenant also had a hearing difficulty the tenant responded that the other tenant did not. The person attending the hearing with the tenant agreed to remain in the hearing to assist the tenant on any part of the hearing the tenant could not hear. The tenant was informed at the outset of the hearing that I, the Arbitrator, would repeat anything the tenant did not clearly hear. For the reasons stated above I have declined the tenants request for an adjournment of the hearing as in my view the granting of this request would be prejudicial to the landlord. The tenant took part in the hearing and did not appear to have any difficulties hearing questions put to the tenant by myself, the landlord or Legal Council for the landlord or to engage in the hearing process. At the end of the hearing I asked the tenant if there was anything the tenant did not hear or understand and the tenant agreed he was mostly able to hear and understand the proceedings.

#### Issue(s) to be Decided

Are the tenants entitled to have the One Month Notice to End Tenancy cancelled?

#### Background and Evidence

The parties agree that this tenancy started on August 01, 2013 for a month to month tenancy. The male tenant had an employment contract with the landlord for caretaking and maintenance duties for the building and the rental unit was part of that agreement. The market rent for this unit was \$1,450.00 however as part of the employment agreement the tenants rent was reduced to \$850.00 per month, due on the first of each month.

The landlord testifies that the tenant started work as a caretaker on or about August 01, 2013. The employment agreement provides that the landlord can terminate the employment for cause without notice to the tenant. The employment agreement states that upon termination of your employment as a resident caretaker you will vacate the resident caretaker's designated suite within 30 calendar days after receiving Notice to End Tenancy as permitted under section 34 of the *Residential Tenancy Act*. On February 24, 2014 the tenant's employment was terminated without cause. The tenant was provided with a termination letter and an entire month's compensation including the rent reduction and tenancy for March, 2014.

The tenant was served with a Notice to End Tenancy for End of Employment on February 24, 2014 which was posted to the door of the rental unit. A copy of this Notice has been provided in evidence. The Notice states that the tenants' rental unit is part of an employment arrangement that has ended and the unit is needed for a new employee. The Notice has an effective date of March 31, 2014.

The landlord requests that the Notice to End Tenancy is upheld; and orally requests an Order of Possession effective for April 26, 2014.

The tenants dispute the landlords claim. The tenant testifies that the job advertisement said they were looking for a couple to manage the building however the compensation for this work was very small when the rent for the unit was taken into account. The tenants asked the landlord if they could take in a student, the landlord said she would have to speak first to the owners, but later came back and verbally agreed that the tenants could take in a student. The tenants found an international student who moved into the unit with the tenants.

Later on the landlord informed the tenants that the student needs to be put on the tenancy agreement. The tenant testifies that he sought advice from the Residential Tenancy Office who informed the tenant that if the tenant could prove they had a verbal agreement with the landlord to take in a student then the landlord cannot alter a tenancy

agreement without the tenants' permission. The tenant testifies that the landlord wanted another \$100.00 a month for the student. This resulted in the trust being lost between the landlord and tenants due to the landlord reneging on the verbal agreement.

The tenant testifies that he went through his three month probation period as the caretaker without any problems. However the tenant testifies that to get out of the verbal agreement concerning the student the landlord terminated the tenant's employment and then gave the tenants the eviction Notice.

The landlord testifies that the tenant's employment was terminated without cause and had nothing to do with the student living in the unit. The tenant's employment just did not work out. The landlord waived their right to collect the extra \$100.00 a month for the additional person living in the unit as per their agreement.

The parties discussed some other issues that have no relevance to the tenants claim. I declined to hear these issues as in my opinion they are matters concerning employment over which I have no jurisdiction. The landlord also discussed briefly a monetary claim against the tenants. However as this is the tenants' application and not that of the landlords I am not permitted under the *Act* to deal with a monetary claim made by the landlord. The landlord would need to file their own application for a monetary claim.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I find that the landlord has terminated the tenant's employment. Having reviewed the documentary evidence before me I find the rental unit was part of this employment arrangement and therefore the landlord is entitled to issue a One Month Notice to End Tenancy for end of employment to the tenants because the employment has ended and the rental unit is needed for the new caretaker of the building.

The tenants' arguments as to why the tenants feel the landlord has ended the tenants employment do not fall under the jurisdiction of the Residential Tenancy Office. The tenant would have to seek clarification concerning any employment issues in a different forum.

Based on the above I find the tenants' application to cancel the Notice must be dismissed.

As the landlord has requested an Order of Possession at this hearing I refer the parties to s. 55(1) of the *Residential Tenancy Act (Act)*:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

Consequently, as the tenants application has been dismissed the landlord will be issued with an Order of Possession pursuant to s. 55 of the *Act*.

As the tenants have been unsuccessful with their application the tenants must bear the costs of filing the application.

### Conclusion

The tenant's application is dismissed without leave to reapply. 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 or before April 26, 2014. This Order must be served on the tenants. Should the tenants fail to comply with the Order, the Order 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: April 16, 2014

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Residential Tenancy Branch

