



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RISHON MANOR  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNC, O, OLC, PSF, LRE, AAT, FF

### Introduction

In her original application the tenant seeks to cancel a one month Notice to End Tenancy dated August 18, 2014 given alleging that the tenant's rental unit is "part of an employment arrangement that has ended and the unit."

The tenant later amended her claim to add claims for an order that the landlord comply with the law or tenancy agreement, that the landlord provide a service or facility, that the landlord's right of entry be suspended or restricted and that the tenant or her guests be allowed access to her suite.

In accordance with Rule 2.3 of the Rules of Procedure it was my determination that the amended claim was not related to the original claim and that the time available at this hearing should be spent dealing with the priority issue of whether or not this tenancy will continue. The amended claim is dismissed, with leave for the tenant to re-apply. I recommend that if the tenant does re-apply, the Residential Tenancy Branch waive any required filing fee.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities, that the Notice to End Tenancy is lawful Notice based on reasonable grounds?

### Background and Evidence

The rental unit is a one bedroom apartment in a conventional fifty unit apartment building.

The tenant is the mother of Ms. I.H. who also attended the hearing. For a number of years and until mid July 2014, Ms. I.H. was the building manager for Ms. J.G., the owner.

At one time Ms. I.H. lived in this apartment. She vacated in or about 2012, retaining her position as manager, and her mother, the applicant tenant, moved in.

While living in the apartment and working as manager Ms. I.H. received a salary and a reduction in her rent. When she vacated, her remuneration was altered. Her salary was increased by the amount she had been receiving as a rent reduction.

Ms. I.H. set the rent her mother would pay at \$350.00 per month and I don't think there is any real argument to be made but that it was significantly lower than market rent of over \$600.00. The owner Ms. J.G. admits that she saw the rent role and knew of the lower rent but the applicant tenant helped her daughter with cleaning and other tasks around the building. In addition, the apartment remained as the on site "office" where building tenants could deposit their rent. Ms. J.G. considered it an added benefit for Ms. I.H., with whom she had a long and trusting relationship.

At one time, years back, it was arranged that Ms. I.H.'s salary, or perhaps some of it, would be reported for government purposes as a salary to the applicant tenant. That appears to have been an isolated occurrence.

As stated, the relationship between Ms. I.H. and the owner Ms. J.G. ended in July. A new manager has now been put in place. A different door is now marked as the office and rent is no longer deposit at the apartment in question. The new employee does not live on site. The landlord does not require the suite for a new employee.

After Ms. I.H.'s job ended Ms. J.G. discovered in the records a tenancy agreement indicating that Ms. I.H. had entered into a one year fixed term tenancy with her mother. The agreement indicates that it ends on May 31, 2015. Ms. J.G. did not authorize the fixed term tenancy. However, she normally left such matters to Ms. I.H. The tenant also filed copies of two prior one year fixed term tenancy agreements between her and her daughter. The owner Ms. J.G. testified that she did not find those prior agreements in the documentation left by Ms. I.H.

Neither the tenant nor her daughter Ms. I.H. gave evidence though present throughout the hearing.

### Analysis

The Notice given to the tenant was altered by the landlord striking out the words "site is needed for a new employee" in the checked off "Reasons" box. The complete reason in the government form reads "Tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee."

Section 52 of the *Residential Tenancy Act* (the “Act”) provides:

**Form and content of notice to end tenancy**

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

*(my emphasis)*

The form has been altered in a material particular in my view, and is invalid for that simple reason.

Nevertheless, a new, correct Notice can be issued and so I wish to deal with the substantive matters raised at hearing.

The landlord gives two reasons for ending the tenancy:

1. That the applicant is no longer working for the landlord. As her employment has ended she has no right to occupy the rental unit, and
2. That the rent is very low and the property of the landlord is at significant risk due to the unauthorized rent being paid by the tenant.

Under BC law a tenant may end a tenancy without giving a reason but a landlord cannot end a tenancy except for a reason set out in the *Residential Tenancy Act* (the “Act”).

The relevant provision for the purposes of this dispute is s. 48(1) of the *Act*. It provides:

**Landlord's notice: end of employment with the landlord**

48 (1) A landlord may end the tenancy of a person employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part by giving notice to end the tenancy if

- (a) the rental unit was rented or provided to the tenant for the term of his or her employment,
- (b) the tenant's employment as a caretaker, manager or superintendent is ended, and
- (c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

In this case the tenant was not the landlord's employee. She did work for her daughter. Even had she been an employee, in my view it would require a specific clause in her tenancy or employment agreement to indicate that the apartment was part employment arrangement.

In any event, the suite is not needed for a new employee and that requirement is a fundamental one for a valid Notice.

I discern that the real problem is not this tenant occupying this apartment. It is the low rent she is paying. A low rent is not a ground for eviction, it is not putting the landlord at significant risk and the evidence shows that Ms. J.G. knew of it and accepted it so it really be considered "unauthorized."

Whether or not the tenant's rent is too low is not an issue fairly raised by the Notice or the application and so I refrain from ruling on it. However, if the parties cannot come to some agreement, the landlord is free to apply under the *Act* and Regulation for an additional rent increase. At that hearing both sides can have a full opportunity to prepare and present evidence and argument on the questions of whether the fixed term tenancy agreement is binding on the landlord or whether the tenant's rent should be raised to market rent now that her daughter's employment has ended.

### Conclusion

The tenant's application to cancel a one month Notice to End Tenancy is allowed. I declare the landlord's Notice to End Tenancy dated August 18, 2014 to be cancelled and of no effect. Her amended claim is dismissed with leave to re-apply.

As the tenant has been successful she is entitled to recover her \$50.00 filing fee. I authorize her to reduce her next rent by \$50.00 in full satisfaction of the fee.

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: October 19, 2014

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Residential Tenancy Branch

