



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNE, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Based on the written submissions of both parties received prior to the hearing it was unclear whether or not I had jurisdiction on the relationship between the parties. As such, I questioned both parties in regard to the tenancy arrangement.

The parties agreed on specific terms such as the value of rent and when it was due. The tenant submitted that while he lived in his parent's home he was in a separate suite that had a bathroom and kitchen facilities.

Based on the testimony of both parties I find the parties are in a tenancy relationship that is governed by the *Residential Tenancy Act (Act)* and I accept jurisdiction on the matters in this Application for Dispute Resolution.

During the hearing, the landlord verbally requested an order of possession should the tenant be unsuccessful in his Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for End of Employment and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 48, 67, and 72 of the *Residential Tenancy Act (Act)*.

If the tenant is unsuccessful in his Application seeking to cancel the 1 Month Notice to End Tenancy for End of Employment it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

### Background and Evidence

The parties agree the tenancy included rent in the value of \$1,000.00 per month that was paid as a deduction from payments made to the tenant on approximately the 27<sup>th</sup> of each month. The payments made to the tenant were under obligation of "Banking and Financial Management Agreement" between the parties.

The tenant submitted into evidence of a copy of a 1 Month Notice to End Tenancy for End of Employment issued September 14, 2014 with an effective vacancy date of October 20, 2014 citing the tenant's rental unit is part of an employment arrangement that has ended and the unit is need for a new employee.

The parties involved are family to each other. The rental unit is located in the tenant's parent's home who also lived on the property under August 2014 at which time both parents were moved into care facilities.

The landlord submits that they did not have an employment agreement with the tenant but rather he was compensated as part of a transitional plan to move the tenant towards independence.

The landlord submits that he had issued the notice because the family intend to sell the property and there is no section under the Notice that allowed him to end the tenancy because the tenant was an adult dependent of the family. The landlord confirmed there is no intention of moving

The tenant provided a substantial amount of testimony that was unrelated to this dispute but was related to other disputes and incidents between the parties and other family members.

Both parties agreed that on or about August 10, 2014 the landlord provided the tenant a notice that indicated he was to be "laid off" from his services. The tenant described the services he was providing to his parents was for their care.

When asked, during the hearing, about whether or not his services were required for his parents' care after they had been moved to a care facility he testified that he was also responsible for the upkeep and care of the residential property.

### Analysis

Section 48 of the *Act* allows a landlord to end a tenancy of a person employed as a caretaker, manager, or superintendent of a 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.

Much of the evidence presented to me consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

The tenant asserts that there was an employment contract between the parties. While the burden, in this case, is on the landlord to provide sufficient evidence to establish that the 1 Month Notice is valid the landlord submits that no employment contract exists.

As per the landlord's testimony, I find it is unclear as to whether or not there was an employment contract between the parties. However, even if there was an employment contract I find the landlord does not intend to provide or rent the rental unit to a new caretaker, manager, or superintendent.

As such, I find the 1 Month Notice to End Tenancy for End of Employment is not enforceable. I find the tenancy remains in full force and effect.

Section 55(1) of the *Act* states if a tenant makes an Application for Dispute Resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession to the landlord if, the landlord makes an oral request for an order of possession and the director dismisses the tenant's Application or upholds the landlord's notice.

As I have found the 1 Month Notice to End Tenancy for End of Employment issued by the landlord is not enforceable I dismiss the landlord's verbal request for an order of possession.

Conclusion

Based on the above I grant the tenant's Application for Dispute Resolution and cancel the 1 Month Notice to End Tenancy for End of Employment issued on September 14, 2014.

As the tenant was successful in his Application for Dispute Resolution I find he is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$50.00** comprised of the fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: November 18, 2014

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Residential Tenancy Branch

