



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SCANDINAVE SPA WHISTLER  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 28, 2014 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The tenant and the landlords' two agents, MM and DD (individually "landlord MM" and "landlord DD," and collectively "landlords"), attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The landlord MM confirmed that he is not an individual landlord for the rental property but rather an operations manager who signed the 2 Month Notice, and that he represents the landlord company, SSW. The landlord DD confirmed that he is the general manager of the landlord company, SSW. Both landlord MM and landlord DD confirmed that they are authorized to represent the landlord company, SSW, as agents at this hearing.

The landlord DD testified that the tenant was served with the 2 Month Notice on October 28, 2014, by placing it on a table inside his rental unit. In accordance with the powers delegated to me pursuant to section 71(2)(c) of the *Act* and as the tenant confirmed receipt of the 2 Month Notice, I find that the tenant was sufficiently served with the 2 Month Notice.

The tenant testified that he served the landlords with his Application for Dispute Resolution hearing package ("Application") on November 10, 2014, by way of registered

mail. The landlord DD confirmed receipt of the Application. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were served with the Application as declared by the parties.

During the hearing, the tenant requested an amendment to add the landlord company, SSW, as a landlord respondent party to this Application. The landlord DD confirmed that he consented to the landlord company SSW being added as a party to this Application. Accordingly, pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's application to add the landlord company SSW (individually "landlord company SSW" and collectively with landlord DD and landlord MM "landlords") to this Application, a change which is now reflected on the front page of this decision.

### Issues to be Decided

Should the landlords' 2 Month Notice be cancelled?

Is the tenant entitled to recover the filing fee for this application from the landlords?

### Background and Evidence

The landlord DD testified that this periodic tenancy began on September 1, 2011. Monthly rent in the amount of \$545.00 is payable on the first day of each month. A security deposit of \$272.50 was paid by the tenant on September 1, 2011. The tenant continues to reside in the rental unit. The rental unit is a three bedroom apartment, that is occupied the tenant, a staff member of the landlord company SSW, and another non-staff member. The rental building has four rental units in total.

The landlords' 2 Month Notice, stating an effective move-out date of December 28, 2014, identified the following reasons for seeking an end to this tenancy:

- *the landlord intends to convert the residential property to strata lots or a not for profit housing cooperative.*

During the hearing, the landlord DD clarified that the landlords intended to convert the residential property to a not for profit housing cooperative. He confirmed that the landlords were not intending to convert the property to strata lots.

The landlord MM testified that this 4-unit rental building was built in 2010. The City required all companies to supply staff housing for its members. The rental building was built for staff members of the landlord company SSW. Over the years since it was built, the company opened the housing to non-staff members who were permitted to rent the

units. The landlord company SSW is a major outdoor spa with a massage pavilion. The company is now approximately 5 years old and has grown exponentially in size from about 30 staff members to approximately 100 staff members. The landlord DD testified that the landlord company SSW realized that it was under-staffed this winter season. The landlord company SSW is looking to build another staff housing unit in April 2015 because of their requirements.

The landlord DD stated that he issued the 2 Month Notice to the tenant and the other non-staff tenant in the rental unit because he intends to convert the unit to a not for profit housing cooperative. He testified that there is a need for staff housing, given the growth of the landlord company SSW and its members, and due to the housing shortage in the area. The tenant does not dispute that there is a housing shortage in the area and that the landlords may need housing for its staff members. The landlord DD testified that there is no mandate from the landlord company SSW to get staff housing now, in this rental building, but because of the housing shortage and growth of the company, the landlord DD requires this rental unit. The landlord DD stated that he is not aware if there is a required number of staff for this rental building to be considered a not for profit housing cooperative. The company SSW requires business operation to be at its maximum potential and if there are no therapists to work locally, the company would lose money, as massages are booked until the end of the season.

Offers are being made by the landlord company SSW for staff members to live and work locally in the area, as there are not enough therapists locally and they need to be recruited from cities that are far away. The landlord DD indicated that there are two employed staff members who currently require housing in the tenant's rental unit. He further stated that the staff members could potentially find other housing in the area but it would be difficult with the housing shortage. The landlord DD stated that the tenant's rental unit was not being isolated compared to the other two units employed by non-staff members. He testified that one staff member currently resides in the tenant's rental unit and that it is a three bedroom apartment which can house both staff members who are now in need of the housing.

The landlord DD stated that he contacted the municipality, which is the governing body of this property when it was originally built for staff housing for the landlord company SSW. He was advised that no permits or approvals were required for him to convert the rental property to a not for profit housing cooperative. He was told to issue 2 Month Notices to the non-staff members occupying the units in the rental building in order to convert the property. The landlords did not provide documentary evidence of the above information.

The landlords have not attempted to convert all four units in the building for this use. Only one unit currently, is owned and occupied by the company SSW's owner, who is a staff member. The other three units, including the tenant's unit are occupied by non-staff members: one unit is occupied by 1 staff and 1 non-staff member; the other unit is occupied by 2 staff and 1 non-staff member; and the final unit is the tenant's unit, which is occupied by 1 staff and 2 non-staff members, including the tenant himself.

The landlord DD stated that two 2 Month Notices have been issued to the tenant and the other non-staff tenant in the rental unit. The application of the other non-staff tenant is not before me. Only the 2 Month Notice issued to this tenant, is before me. The landlord DD stated that no 2 month notices have been issued to the two other non-staff members who are renting the two other units in the building. He testified that the 2 month notices would be issued as the need arises, probably sometime in 2015, but there is no set date, as staff would be moved around. The landlord DD stated that the landlords are operating in good faith and allowing non-staff members to stay as long as possible before issuing 2 Month Notices.

The landlord DD is not aware of the rent to be charged to these two new staff members who intend to occupy the rental unit. He stated that the rent would likely be subsidized and depends on the whether the staff members are spa/guest experience members or massage therapists.

The tenant testified that the landlords could have issued the 2 Month Notice at a better time, such as the spring season 2015, when it is easier to find another rental unit. The tenant stated that the new staff member who recently began occupying the same rental unit was initially getting along with him and then suddenly stopped liking him. He stated that verbal altercations occurred between him and the staff member, that issues were discussed and he did not tell the landlords about these problems. He further confirmed that he does not think that the landlords are evicting him because of personal issues, but that he probably requires the housing for staff members.

The landlord DD stated that anytime during the year would be a bad time to issue the 2 Month Notice, because housing shortage is always a factor. The landlord DD stated that he is not aware of any verbal issues between the staff member and the tenant in the rental unit; he confirmed that a staff member mentioned something to him in passing, but nothing was done by the landlords. He further indicated that he is not evicting the tenant because of this new staff member in the rental unit.

## Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on October 28, 2014, and filed his Application on November 6, 2014. Therefore, he is within the time limit under the Act. The onus, therefore, shifts to the landlords to justify the basis of the 2 Month Notice.

Subsection 49(6)(d) of the Act sets out that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy."*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy."*

"Residential Property" is defined under section 1 of the Act, as:

"(a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located;

- (b) the parcel or parcels on which the building, related group of buildings or common areas are located;
- (c) the rental unit and common areas, and;
- (d) any other structure located on the parcel or parcels.”

As per section 49(6)(d) and the 2 Month Notice reason outlined above, the landlords must intend to convert the “residential property” which is defined as an entire building, not just a single rental unit, for not for profit cooperative housing use. The above definition of “residential property” also includes “the rental unit and common areas,” and the landlords intend to convert only the tenant’s rental unit for this use. However, the landlords cannot convert the common areas as well, as required by the above definition, given that there are still non-staff members occupying the other units and using these common areas. The landlord DD testified that he intended to evict the other non-staff members at different times, when the need arises.

Despite the housing shortage in the area, the additional number of staff employed by the company, the need to relocate these staff to the local area, the busy nature of the company until the end of this winter season, and the increased number of applications currently being received and also expected shortly, the landlords have not issued additional 2 Month Notices and attempted to convert all four units in the building to a not for profit housing cooperative use. Both parties agreed that the other two non-staff members in other units of the rental building, have not yet received 2 Month Notices. The landlord DD testified that the landlord company SSW did not mandate that this rental building be used only for staff housing at this time. The two new staff members can attempt to find other housing in the area.

Based on a balance of probabilities and the evidence of the parties, I do not find that the landlords intended to convert the residential property into a not for profit housing cooperative, as per section 49(6)(d) of the *Act*. The landlords are not converting the entire residential property at this time, or even the common areas of the rental building. The landlords have not issued other 2 Month Notices to the two non-staff members in the two other units of the rental building. The landlords do not know when it will issue these other 2 Month Notices, as it is based on need. I find that this is a future event which may not even occur.

I find that the landlords have not met their onus of proof to show that they intend to convert the residential property into a not for profit housing cooperative, in good faith.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful in this Application, he is entitled to recover the filing fee of \$50.00 paid for this Application, from the landlords.

### Conclusion

The 2 Month Notice, dated October 28, 2014, is cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

I order that the tenant is entitled to deduct \$50.00 from his future rent at the rental unit, to recover the filing fee for this Application from the landlords. This is in accordance with the offsetting provisions of Section 72(2)(a) of the *Act*.

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: January 2, 2015

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Residential Tenancy Branch

