



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIVE MILE HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            CNE, OLC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant to cancel a notice to end tenancy because the Tenant's employment had been ended with the Landlord. The Tenant also applied for the Landlord to comply with the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement.

An agent for the Landlord and the Tenant appeared for the hearing and both parties provided affirmed testimony as well as documentary evidence prior to the hearing.

The parties were informed of the hearing process and were asked to confirm their understanding of the proceedings. No questions were raised about the hearing process. The parties were given a fully opportunity to present their evidence, make submissions to me, and to cross examine the other party on the evidence provided.

The Landlord's agent confirmed receipt of the Tenant's Application and documentary evidence. The Tenant confirmed receipt of the Landlord's late submission of documentary evidence but confirmed that she had sufficient time to consider the Landlord's evidence prior to this hearing. Therefore, I have considered all of the documentary evidence that was before me.

The Tenant explained that her Application for the Landlord to comply with the Act was in relation to her wanting to remain in the tenancy which is the reason why she had disputed the notice to end the tenancy.

### Issue(s) to be Decided

Is the Tenant entitled to cancel the notice to end tenancy?

### Background and Evidence

This tenancy was for a one bedroom apartment in a residential complex pertaining to an employment contract between the Landlord and Tenant. The tenancy started on June 1, 2013. The written employment contract titled "Re: Offer of Employment" was provided into written

evidence and shows the Tenant was employed as a Resident Manager for an indefinite term commencing June 1, 2013. Section 5 of the contract sub titled "Tenancy" states:

*"You will occupy a one bedroom apartment, suite [the rental unit number] on a month to month tenancy, at a reduced rate of \$100.00 per month, with a market rent of \$1,100.00. The rent is due on the first day of each month, commencing June 1, 2013"*

[Reproduced as written with the exclusion of the rental unit number]

Section 9 of the contract titled "Termination Clause" states in part:

*"The Company may terminate your employment at any time and without notice for a breach of the terms and conditions of this offer of employment or for just cause."*

[Reproduced as written]

The Tenant testified that on January 30, 2015 she was provided with a letter terminating her employment with the Landlord effective February 28, 2015. In addition to this letter, the Tenant also confirmed receipt of a 1 Month Notice to End Tenancy for End of Employment (the "Notice") dated January 30, 2015. The Notice was provided into written evidence and shows an effective vacancy date of February 28, 2015. The Tenant applied to cancel the Notice on February 8, 2015.

The Tenant explained that while there was no signed residential tenancy agreement between the parties, she was not disputing her employment contract. The Tenant confirmed that her tenancy for the rental unit was linked to her employment as a resident manager.

The Tenant also explained that while there were many issues that led to the termination of her employment contract, she was not disputing the termination of her employment in this hearing. The Tenant explained that she wanted to continue to occupy the suite for the market value rent of \$1,100.00 per month. She asserted that she was disputing the Notice because the Landlord had not issued it in good faith because they have no intention of providing the rental suite to another resident manager.

The Tenant argued that there were other suites in the residential building that could easily be used for a resident manager's office and that the rental suite was no more equipped or designated to serve as a resident manager's office than these other vacant rooms.

The Landlord's agent testified that she had been an agent for the Landlord since 2012 and at no other time had any of the other rental units in the building complex been designated as a resident manager's suite. The Landlord's agent testified that the previous resident manager also resided and performed duties out of the same rental suite as the Tenant. She argued that the Tenant's current suite was equipped with internet, phone and fax lines for resident manager duties to be performed.

The Landlord's agent testified that correspondence for the building goes to the rental suite mail box located in the reception of the building. She stated that the rental suite number and mail box number are the same number that appears in the registered address for the building.

The Landlord's agent testified that there are other vacant suites in the building but these have yet to be renovated, equipped with communication lines to perform employment duties, and are not in close proximity to the front of the building like the current resident manager's suite is. The Landlord's agent added they would incur unnecessary costs for retrofitting another unit to make it suitable for a resident manager's suite.

The Tenant acknowledged that the previous resident manager had resided in the rental suite but submitted that the resident manager employed prior to them had not. The Tenant disputed that her rental suite was the registered address for the building submitting that while she worked there she never received any correspondence in her mail box for the building until recently after her employment had been terminated.

The Tenant testified that she had given all the files and the communication equipment back to the Landlord after her employment was terminated and there was nothing in her suite left to be removed. The Tenant also submitted that there were other suites in the building that had been renovated and could easily be used as a resident manager's suite with little effort and cost. The Tenant also stated that these units were still located in close proximity to the reception of the building.

The Landlord's agent testified that she had never heard or knew of the resident manager who had been employed prior to the previous resident manager as submitted by the Tenant. The Landlord's agent pointed to several utility bills for the owner of the building which showed the registered service address on the account as being that of the rental suite.

The Landlord's agent testified that the rental suite was needed for new resident managers that had both been recently employed to start work on March 1, 2015. The employment contract, similar to that of the Tenant's employment contract, was provided by the Landlord into written evidence.

The Landlord's agent explained that the contract indicates the new resident managers will be occupying the designated rental suite as part of the contract. However, because the Tenant has failed to vacate the suite, the new residential managers are having to reside in a building nearby and are having to use their own cell phones to conduct and perform their duties.

The Landlord's agent also pointed to previous payroll documents which identified the Tenant as a resident manager. The Tenant explained that when she received these documents at the time they were created, they did not identify her as a resident manager. The Landlord's agent did not dispute that the word 'resident manager' had been added later but this was to identify the Tenant as the resident manager. When the Tenant was asked how this evidence related to her

argument, the Tenant submitted that this was evidence of the Landlord's ability to modify and distort documents to change the facts. The Tenant then went on to suggest that the employment contract for the new resident managers was not real and doubted its authenticity. As a result, the Landlord's agent called one of the new resident managers as a witness to the hearing.

The witness dialed into the conference call and provided affirmed testimony. The witness confirmed that he and his wife had been employed by the Landlord as resident managers and they were waiting to move into the rental suite.

The Tenant was allowed to cross examine the witness. The Tenant asked the witness where he was currently residing and the witness provided the Tenant with the address. I asked the witness where his current residence was located in proximity to the Tenant's rental suite and he responded by confirming that it was close to the building containing the rental suite.

The Landlord's agent asked the witness how he was currently performing his duties under his role as the new resident manager. The witness confirmed that he was using his cell phone and a laptop provided to him by the Landlord to conduct limited duties using the Wi-Fi password belonging to the office in the building they are residing in.

The parties were asked if they wanted to provide any further evidence or make any further submissions before the hearing was concluded. Both parties informed me that they were satisfied with the evidence they had provided and no further requests were made of me.

### Analysis

I have examined the Notice and I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Notice was personally served to the Tenant on January 30, 2015.

The Tenant made her Application to dispute the Notice on February 8, 2015. Therefore, I find the Application was made within the ten day time limit afforded to the Tenant by Section 48(5) of the Act.

Section 48 (1) of the Act effectively establishes a three part test the Landlord must meet in order to end a tenancy for the reason that a tenant's employment has been ended. The Act specifically states:

*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.*

Therefore, I must analyse the evidence provided by the parties and consider whether the Landlord has met the burden to prove the test as listed above. That burden is based on the balance of probabilities.

Having examined the employment contract provided into written evidence, it is clear that the rental unit in question was provided to the Tenant for the term of her employment and the rental suite is located in the building in which the Tenant managed. The Tenant made reduced rental payments that were inextricably linked to her salary as evidenced by the employment contract provided into written evidence.

The parties were not in dispute about the fact the Tenant's employment had been ended. Therefore, I find that the Landlord's agent has proved Sections 48(1) (a) and (b) of the Act.

I now turn my mind to Section 48(1) (c) of the Act, which is the final part of the test that a landlord must meet. This part of the Act requires a landlord to issue the notice in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

Notwithstanding both parties' arguments in this respect, I find the witness testimony as the best evidence in this case which demonstrates the Landlord's agent's intention to provide the Tenant's rental unit for the new resident managers.

I found the witness to be credible because the answers he provided in response to questions asked by both myself, the Landlord's agent, and under cross examination by the Tenant, were consistent with the Landlord's agent's testimony regarding the employment contract he had entered into. The witness confirmed where he currently was residing and how he and his wife were performing their duties.

In addition, the Landlord submitted a copy of the signed employment contract listing the witness as the new resident manager who was to start employment after the Tenant's employment had been ended and was to occupy the rental unit in which the Tenant currently resides, I find this evidence to be clear and convincing proof that the Tenant's rental suite is required to be provided to new resident managers.

In respect to the Tenant's arguments that the rental suite is not equipped specifically for resident manager's duties and there are other rental suites available in the building, I find that the undisputed fact that the previous resident manager was also residing in the same rental suite is

sufficient for me to determine that the rental suite was designated for occupancy by the building resident manager.

I find the Tenant failed to provide sufficient evidence to show the Notice was not being issued in good faith. Rather, I find the Landlord's agent's testimony and submissions, which were supported by witness testimony and documentary evidence, met the burden to prove good faith. Therefore I uphold the Notice issued to the Tenant on January 30, 2015.

Conclusion

The Landlord has met the burden of proof to uphold the Notice. Therefore, I am unable to cancel the Notice. As a result, the Tenant's Application is dismissed without leave to re-apply.

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: March 04, 2015

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Residential Tenancy Branch

