



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNL, OLC

### **Introduction**

This hearing dealt with an application by the tenant filed on May 28, 2015 to cancel a 2 Month Notice to End Tenancy For Landlord's Use of Property (the Notice), dated May 27, 2015, with an effective date of August 01, 2015 – issued by the property manager for the corporate owner of the rental unit.

Both parties attended the hearing and were given opportunity to present all *relevant* evidence and testimony in respect to this dispute and to make relevant prior submission to the hearing and fully participate in the conference call hearing. At the outset the landlord requested an Order of Possession. Only the tenant provided document evidence to this matter which the landlord claims to have received. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice issued was a valid Notice, issued in good faith, for the stated reason(s).

### **Issue(s) to be Decided**

Is the Notice to End tenancy valid and issued, in good faith for valid reason(s)?  
Should the Notice to End dated May 27, 2015 be set aside?  
Is the landlord entitled to an Order of Possession?

### **Background and Evidence**

The tenant submitted a copy of the 2 Month Notice to End. The landlord did not advance or provide any document evidence to this matter. The Notice to End was issued by the management entity for the owner of the rental unit for the following reason;

*-the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse*

The tenant disputes the Notice to End on the basis the Notice to End was not properly issued in accordance with the provisions of the Act in respect to a 2 Month Notice to End. The tenant argues the landlord in this matter does not qualify to end the tenancy under this section of the Act as they are not an individual defined as a landlord for the purpose of the Notice. And that even if they were, the tenant questions the *good faith intent* requirement for issuing the Notice. The tenant claims the landlord has been trying to end the tenancy several times by other means and that the landlord's true motive for ending the tenancy is that the tenant has been advocating for other tenant's in the residential property in their disputes with the landlord.

The landlord's representative testified the individual intended to occupy the rental unit is claimed to hold a majority stake – majority shareholder – in the corporate ownership, which the representative claims is a *family corporation* as defined within the Act in respect to a Section 49 Notice – and that the balance of voting shares are owned by other family members. The designated individual intended to occupy the rental unit was not present in the hearing nor provided other evidence; however, the landlord representative claims that none the less the individual intends to personally occupy the rental unit.

### **Analysis**

In this type of application, the burden of proof rests with the respondent (landlord) to provide evidence that the Notice was validly issued for the stated reason.

**Section 49** of the Act – **Landlord's Notice: Landlord's use of property**, states that a landlord - as defined - may end a tenancy under the prescribed provisions of Section 49 of the Act by giving notice to end the tenancy. In this matter, I find that the respondent landlord *may* have issued the Notice to End in good faith and for a valid reason under this section; but, in the face of the tenant's opposition on application, they have failed to provide any meaningful evidence to prove their burden or veracity of their claims in respect to the individual intending to occupy the rental unit: their standing as an owner / shareholder, or standing as a qualified shareholder within the purported *family corporation*. The hearing heard that it was available to the landlord to provide such proof but did not. In addition, if the candidate individual intending to occupy the rental unit is a qualified owner within a *family corporation* – as defined in the Act - the Notice issued to the tenant did not indicate or reflect that as the reason, pursuant to Section 49(4) of the Act.

As a result of all the above, I find the landlord has not provided sufficient evidence proving the Notice to End was validly issued as prescribed in the Act, or issued for the stated reason. Therefore, **I Order** that the Notice to End dated May 27, 2015 **is cancelled and of no effect.**

If necessary, the landlord remains at liberty to issue a *new valid Notice to End for valid reason*, if they have proof to support the Notice.

**Conclusion**

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

The landlord is at liberty to issue a new valid Notice to End for valid reason(s).

**This Decision is final and binding on both parties.**

*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: July 14, 2015

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Residential Tenancy Branch

