



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HFBC HOUSING FOUNDATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNE, FF

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for End of Employment (the 1 Month Notice) pursuant to section 48; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that he received the landlord's 1 Month Notice posted on his door on September 23, 2015. Landlord CI (the landlord) confirmed that the landlord received a copy of the tenant's dispute resolution hearing package handed to the landlord on October 15, 2015. Both parties confirmed receiving one another's written evidence packages. I am satisfied that all of the above documents have been duly served to one another in accordance with sections 88 and 89 of the *Act*.

At the hearing, the landlord made an oral request for an Order of Possession on the basis of the 1 Month Notice in the event that the tenant's application to cancel that Notice were dismissed. I advised the parties that I could only consider issuing an Order of Possession on the basis of the 1 Month Notice in accordance with section 55(1) of the *Act*. As there is no landlord application before me, I told the parties that I had no authority to consider the landlord's additional request to issue an Order of Possession on the basis of a Mutual Agreement to End Tenancy, which the parties entered into on November 17, 2015, well after the 1 Month Notice was issued.

### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The parties provided conflicting sworn testimony regarding whether a written Residential Tenancy Agreement (the Agreement) was prepared when this tenancy began on or about January 1, 2015. This tenancy apparently was entered into between the tenant's brother, his advocate at this hearing, who was at that time employed as the landlord's Manager of Operations. According to the tenant's advocate, there was a written Agreement, but the tenant lost his copy of it and the landlord has not provided the tenant with another copy requested by the tenant. The landlord testified that the landlord has been unable to locate any copy of a written Agreement with the tenant, and is uncertain as to whether one ever existed.

The parties agreed that the tenant was employed as an apprentice plumber for the landlord from August 1, 2015 until September 8, 2015, at which time he left the landlord's employ. During the course of the tenancy, the tenant has paid a subsidized monthly rent of \$575.00, in advance on the first of each month. The landlord did not dispute the tenant's claim that he has paid his monthly rent until the end of November 2015. The parties disagreed as to whether the landlord had received any payment for December 2015.

The landlord testified that the tenant took possession of this subsidized rental unit in a building that is primarily rented to tenants whose rent is geared to their income. She said that there are a few market rental units within this building, but not many. She also said that two of the rental units are rented to people who look after the landlord's rental properties. She said that the tenant did not complete a proper application for subsidized housing when this tenancy began, and, in fact, the tenant was earning more income than would have been allowed had he applied for a subsidized rental unit.

The tenant's advocate maintained that the tenant was only employed for the landlord for the period from August 1 until September 8, and questioned why the landlord was seeking to end this tenancy on the basis of an end to his employment. The landlord questioned the tenant as to whether he worked for contractors who looked after some of the landlord's buildings during the period prior to August 1, 2015. The tenant said that some of the work he performed as an apprentice plumber was for contractors in the landlord's buildings, but other work was done on buildings not owned by the landlord.

### Analysis

Section 48 of the *Act* establishes the basis whereby a landlord can issue a 1 Month Notice for End of Employment. This section reads in part as follows:

**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.*

*(2) An employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving notice to end the tenancy if the employment is ended...*

During the hearing, the landlord clarified that the tenant was neither a caretaker, manager or superintendent of the residential property of which the rental unit is a part. Even if I were to find that the tenant's role with the landlord's company for the short period he was an employee was akin to that of one of these positions, the landlord testified that the landlord was not planning to use the tenant's rental unit for a new caretaker, manager or superintendent. The landlord proposed renting this to a prospective tenant who validly met the subsidized housing requirements for obtaining a rent geared to income rental unit in this building. She stated that the landlord's application to end the tenancy was pursuant to the provisions in section 48(2) of the *Act*, as outlined above.

Had this tenancy commenced at the time the tenant became an employee of the landlord, I would find that the landlord was entitled to end the tenancy when his employment ended and after a valid 1 Month Notice were issued. However, in this case, I find that there is clear evidence that for whatever reason, the rental unit was rented to the tenant as of January 2015, seven months before he became an employee of the landlord. His work for contractors, some of which may have been performed in the landlord's buildings, does not in any way qualify him as an employee of the landlord.

Whether or not the tenant should have been allowed to enter into this tenancy, and the circumstances surrounding his brother's role in enabling that to happen, are issues between the landlord and their former employee. These are not matters that are before

me. My authority to consider this matter is limited to whether the landlord's 1 Month Notice was validly issued pursuant to section 48(2) of the *Act*.

Based on a balance of probabilities, I find that this tenancy, either by way of an oral agreement between the tenant and the landlord's then Manager of Operations or by way of a missing written Residential Tenancy Agreement, existed far in advance of any employment relationship established between the landlord and the tenant. Throughout this unusual tenancy, the tenant paid the same monthly rent, whether or not he was an employee of the landlord. On this basis, I find that the landlord has not established that the tenant's monthly rent was reduced as a condition of his employment during the five plus weeks when he was an employee. When his employment ended, little more than five weeks after it began, the tenant's original tenancy agreement resumed, at the same monthly rent. Under these circumstances, I allow the tenant's application to cancel the 1 Month Notice, which is of no continuing force or effect.

As the tenant has been successful in this application, I allow the tenant to recover his \$50.00 filing fee.

#### Conclusion

I allow the tenant's application to cancel the 1 Month Notice. The 1 Month Notice is cancelled and of no continuing force or effect. This tenancy continues until ended in accordance with the provisions of the *Act*.

I issue a monetary award of \$50.00, which the tenant may implement by reducing one of his monthly rent payments by that amount.

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: December 03, 2015

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Residential Tenancy Branch

