



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RBR Investments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNL, FF

### Introduction

This hearing dealt with an application by the tenants for an order setting aside a 2 Month Notice to End Tenancy for Landlord's Use. Both parties appeared and gave affirmed testimony. No issues with the documentary evidence were expressed.

### Issue(s) to be Decided

Is the 2 Month Notice to End Tenancy for Landlord's Use dated September 14, 2015 valid?

### Background and Evidence

The tenancy commenced March 1, 2014 as a one year fixed term tenancy and has continued thereafter as a month-to-month tenancy. The tenants pay a monthly rent of \$1500.00. They paid a security deposit of \$700.00 at the start of the tenancy.

The rental unit is located on the second floor of a two story building. The main floor is occupied by commercial enterprises. According to the tenants their unit has been rented as a residential unit for the past ten years.

There is a second smaller unit on the second floor. In the past it was used as an office by the previous owner of the building and living accommodation for a relative of the previous owner. Recently the son of one of the partners in the landlord company has been living in this unit. The tenants argued that this second unit is not a self-contained unit as all of the meters are shared with their unit.

The landlord bought this building on April 1, 2015. Their intention has always been to use the rental unit as an office for a wholesale car business owned by two of the three partners in the landlord company. The company has both a retail licence and a wholesale licence from the Vehicle Sales Authority.

Before buying the property their lawyers obtains a report from property consultants as part of the due diligence process. That report stated:

"Lot 1 is presently zoned CHI (Highway Commercial Industrial Zone). . .The intent of this zoning is 'to accommodate those commercial and related uses requiring large lots and exposure to major highways, which generally are not accommodated in shopping centres. . .

The Subject Building on Lot 1 is currently improved with two rental suites, however, according to the current CHI zoning bylaw, one dwelling unit per lot is permitted, 'provided that it is within the principal building and is occupied by the owner or the owner's employees.' The present use of the residential suites appears to be non-legal and non-conforming, given the additional rental suite. We have assumed that the current use of the rental suites may continue, however, if required one of the rental suites may be converted to office use as noted by the Client."

At the end of May the landlord gave the tenants a letter giving them 60 days notice of termination of their tenancy agreement. On July 1 the landlord gave the tenants a second notice reminding them that the tenancy would end on August 1.

On July 7 at the request of the tenants the landlord returned the security deposit to the tenant and provided them with a letter of reference. The tenants had indicated that they had found a likely place and needed the security deposit to secure the rental. The letter of reference stated that:

"The reason for termination of tenancy is that [landlord] will be remodelling for corporate offices. And turning this building into commercial property." Ultimately the tenants did not secure a new place and they have not repaid the security deposit to the landlord.

On September 14, 2015 the landlord issued and served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use. The reason stated on the notice was:

"The landlord has all the necessary permits and approvals required by law to convert the rental unit to a non-residential unit."

The tenants filed this application disputing the notice on September 22, 2015.

The tenant argues that the landlord has not obtained all the necessary permits and approvals required by law and the permits that have been obtained were obtained after the notice to end tenancy was served on them.

The tenant testified that in conversations with the City Planner and the Administrative Coordinator he was told that the property is zoned CHI, which limits office use to engineering, surveying, general contractor, government or utility offices.

The tenants filed copies of e-mails received from local municipal officials.

One e-mail from the City Planner that appears to have been sent on August 6 states that: "The CHI Zone permits sales of vehicles less than 5,000 kg GVW. Office use permitted are limited to engineering, general contractor, government or utility offices."

On September 17 the tenant wrote the City Plan Review Section Manager. The tenant provided the name of the landlord and the civic address of the rental unit. He stated that: "They want to convert our residential suite to commercial use."

The tenant asked if:

- any permits had been taken out by the landlord for the property;
- the unit would require any upgrades if it were being converted from residential to commercial use; and,
- the landlord requires a business licence to make any of these changes?

The response from the Manager was: "We do not have a permit application for this. And yes a building permit and a business licence would be required."

There is a second undated e-mail from the same official that states:

"This building appears to be used for retail. I do but see any permits for residential in our system (I just had a quick look). To change the use a tenant improvement permit and a business licence would be required."

The landlord testified that their business is a permitted use of the building because they fit under the used car exemption. He pointed out that there is another car dealership in the building.

The landlord testified that the CHI zoning bylaw states that only one dwelling is permitted per lot and it must be occupied by the owner or the owner's employees.

The landlord further testified that they have been to City Hall and have talked to city officials on the telephone. The city has advised them that there are no residential units recorded for the building. They point to the e-mail from the City Plan Review Section Manager as proof that there are no approved residential units for this building. The city has advised them that because the building is zoned commercial their intended use complies with the zoning. They are of the understanding that they do not required a tenant improvement permit because the building is already zoned commercial and, as they are not making any structural changes to the space, they do not need a building permit.

The landlord filed evidence that the company that is going to be using this space obtain its' business licence on October 21, 2015. The landlord testified that they applied for the business licence just a few days before it was issued.

The tenant pointed out that the licence is not for the landlord and was obtained after the notice to end tenancy was served.

At the end of the hearing the landlord made an oral request for an order of possession. The landlord also asked that if the tenancy was going to continue that the tenants be required to

repay the security deposit. The tenants indicated their willingness and their ability to pay the security deposit.

### Analysis

On any application where the validity of a notice to end tenancy is an issue the onus is on the landlord to prove, on a balance of probabilities, that the notice complies with the legislation.

In this case the landlord must prove:

- What permits and approvals, if any, are required by law to convert the rental unit into a non-residential unit?
- That they had obtained all the required permits and approvals before serving the 2 Month Notice to End Tenancy for Landlord's Use.
- That they intend in good faith to use the unit for a non-residential unit.

There was no suggestion that the landlord intends to use this space for anything other than a commercial space or that the notice was served for some other, improper, purpose.

The issue is what permits and approvals are required by the relevant government authorities before the landlord can convert this unit to a non-residential use. The evidence presented by the parties is conflicting. Most critically, the landlord says they have been advised by city officials that no permits are required but did not file any correspondence confirming that this is the case. On the other hand the tenant filed e-mails from city officials stating that a building permit and a business licence will be required.

If the landlord had filed some official correspondence from the city listing the permits and approvals, if any, that are required for this conversion, and proof of when the required permits and approvals had been obtained, it would have been a simple task to determine it would have been a simple task to determine whether the landlord had complied with s. 49(6). As it is, the evidence does not provide that clarity.

As stated earlier the onus of proof is on the landlord. I find that the landlord has not met the required standard of proof and that therefore the tenants' application must be granted. The 2 Month Notice to End Tenancy for Landlord's Use dated September 14, 2015 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

The landlord may always serve a new 2 Month Notice to End Tenancy for Landlord's Use on the tenants. If the tenants dispute that notice the landlord knows the case it will have to meet.

As the tenancy is continuing the landlord is entitled to a security deposit. Pursuant to s. 62(3) I order the tenants to pay the sum of \$700.00 to the landlord within 30 days of being served with a copy of this decision by the landlord. The parties attention is drawn to s. 47(1)(l) which provides that a landlord may serve a tenant with a 1 Month Notice to End Tenancy for Cause if the tenant does comply with an arbitrator's order within 30 days of the later of the date the

tenant received the order or the date specified in the order for the tenant to comply with the order.

As the tenants were successful on this application they are entitled to reimbursement from the landlord of the \$50.00 fee they paid to file it. Pursuant to s. 72 that amount may be deducted from the next rent payment due to the landlord.

Conclusion

- a. For the reasons set out above, the 2 Month Notice to End Tenancy for Landlord's Use dated September 14, 2015 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.
- b. An order that the tenants must re-pay the landlord the security deposit has been made.
- c. The tenants have been awarded the \$50.00 filing fee.

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 17, 2015

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Residential Tenancy Branch

