



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNR, CNE

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set to aside a Notice to End Tenancy because the Tenant's employment has ended. The Tenant amended that Application to include an application to set aside a Notice to End Tenancy for Unpaid Rent.

The Tenant stated that on May 30, 2016 the Application for Dispute Resolution, the Notice of Hearing, documents the Tenant submitted to the Residential Tenancy Branch with the Application, and photographs the Tenant submitted to the Residential Tenancy Branch on June 01, 2016 were personally served to an Agent for the Landlord, who is also the Landlord's girlfriend. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)* and they were accepted as evidence for these proceedings.

The Tenant stated that on June 07, 2016 the amended Application for Dispute Resolution and 5 pages of evidence the Tenant submitted to the Residential Tenancy Branch on June 13, 2016 were personally served to the Landlord. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act* and they were accepted as evidence for these proceedings.

### Issue(s) to be Decided

Should a Notice to End Tenancy, served pursuant to section 46 of the *Act* be set aside?  
Should a Notice to End Tenancy, served pursuant to section 48 of the *Act* be set aside?

### Background and Evidence

The Tenant stated that:

- this tenancy began on August 01, 2010;
- he began working as a property manager for the Landlord on November 01, 2010;
- the rental unit was not provided to him as a term of his employment contract;

- his employment ended on May 26, 2016 or May 27, 2016;
- on May 25, 2016 the Landlord served him with a One Month Notice to End Tenancy for End of Employment;
- as the rental unit was not given to him as a term of his employment he does not believe the Landlord has the right to end the tenancy simply because his employment has end;
- he agreed to pay monthly rent of \$525.00 by the first day of each month;
- he does not owe any rent for any period prior to June 01, 2016;
- on May 27, 2016 he paid \$300.00 in rent to the Landlord for June of 2016;
- he did not pay the remaining \$225.00 in rent for June of 2016 because the Landlord owes him \$225.00; and
- on June 01, 2016 the Landlord served him with a Ten Day Notice to End Tenancy, dated June 01, 2016.

### Analysis

Section 48(1) of the *Act* allows a landlord to end a 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.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant moved into this rental unit prior to entering into an employment contract with the Landlord and that this rental unit was not provided to the Tenant for the term of his employment. I therefore find that the Landlord does not have the right to end the tenancy pursuant to section 48(1) of the *Act* and I grant the Tenant's application to set aside the One Month Notice to End Tenancy for End of Employment.

On the basis of the undisputed evidence I find that rent for this tenancy was due by the first day of each month; that the Tenant did not owe any rent for the period prior to June 01, 2016; and that the Tenant was obligated to pay rent for June on, or before, June 01, 2016..

Section 46(1) of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. On the basis of the undisputed evidence I find that on June 01, 2016 the Landlord served the Tenant with a Ten Day Notice to End Tenancy, dated June 01, 2016. As rent for June was not overdue on June 01, 2016 and there is no evidence rent was overdue from any previous period, I find that the Landlord did not have the right to serve the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent on June 01, 2016. As the Landlord did not have

the right to serve the Ten Day Notice to End Tenancy on June 01, 2016, I grant the Tenant's application to set aside this Notice.

I note that I have not determined whether or not the Tenant has paid his rent, in full, for June of 2016 as that matter is not relevant to my decision in this matter. For the benefit of both parties, the parties are advised that a tenant cannot withhold rent because he believes a landlord owes him wages, unless the parties have specifically agreed that the tenant can withhold rent in lieu of wages.

### Conclusion

The Ten Day Notice to End Tenancy for Unpaid Rent and the One Month Notice to End Tenancy for End of Employment that are the subject of these proceedings are set aside. This tenancy shall continue until it is ended in accordance with 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: June 29, 2016

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Residential Tenancy Branch