



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HARRON INVESTMENTS INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

OPL – Landlord's application  
CNL RP – Tenant's application

### Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by the Landlord and the Tenant

The Landlord filed their application for Dispute Resolution on November 28, 2016 seeking an Order of Possession for landlord's use of the property. The Tenant filed his application for Dispute Resolution on November 9, 2016 seeking an Order to Cancel a 2 Month Notice to end tenancy for landlord's use and an Order for repairs to the unit, site, or property.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant's request to set aside, or cancel the Landlord's 2 Month Notice to End Tenancy for landlord's use; and I dismissed the balance of the Tenant's claim with leave to re-apply.

The hearing was conducted via teleconference and was attended by two agents for the corporate Landlord (the Landlords), the Landlords' witness (the Witness) and the Tenant. Each person gave affirmed testimony.

Each application listed one corporate Landlord and that landlord was represented by two agents who each submitted evidence. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each party confirmed receipt of the application, notice of hearing documents, and evidence served by the other party. Each party affirmed they served the other with copies of the same

documents that they had served the Residential Tenancy Branch (RTB). No issues regarding service or receipt were raised.

In determining receipt of evidence I reviewed the Tenant's evidence submissions by date after which the Resident Manager confirmed receipt of those same documents as evidence. During the course of this proceeding the Resident Manager changed her testimony to say she did not receive a copy of the November 4, 2016 Health Authority letter as evidence. Upon further clarification she stated she had originally received a copy of it earlier; that she had a copy of it; so "she had received it" at some point.

Based on the above, I was satisfied each party received copies of the same evidence submissions that were received on file by the RTB. As such, I accepted the submissions from both parties as evidence for these proceedings.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although I considered all relevant submissions not all those submissions are listed in this Decision.

#### Issue(s) to be Decided

1. Have the Landlords met the burden to prove the good faith requirement for the 2 Month Notice issued October 28, 2016?
2. If not, should the 2 Month Notice issued October 28, 2016 be cancelled?

#### Background and Evidence

The Tenant entered into a written fixed term tenancy agreement which began on October 1, 2005 and switched to a month to month tenancy one year later. Rent has been increased over time and is currently payable on the first of each month in the amount of \$715.00. During October 2005 the Tenant paid \$297.50 as the security deposit.

Each party confirmed that on October 30, 2016 the Landlord personally served the Tenant with a 2 Month Notice to end tenancy for landlord's use. Neither party submitted a copy of that Notice into evidence. Both parties stated the Notice was issued on the RTB prescribed form; was signed on October 28, 2016; listed an effective date of December 31, 2016; and that page two of the Notice indicated the Notice was issued for the following reason:

*The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.*

The rental unit was described as being a one bedroom apartment located on the main floor of a 51 unit, three floor building. The Tenant's rental unit is located near a commonly used entrance that has access to the underground parking.

The Owner testified that in September 2016 he received a request from his resident manager to provide assistance with managing the building. She advised him that her husband had obtained employment and combined with looking after her young children she could no longer manage the building on her own due to the increased security problems.

The Resident Manager testified she required assistance with managing, cleaning, maintaining, and renovating the building. As a result she asked the Landlord to hire an assistant manager to

assist her. She submitted that they had not had any vacancies in the building for the last "several months". She stated they decided to hire someone to start January 1, 2017 so they served the Tenant with the 2 Month Notice effective December 31, 2016.

When asked if they wished to submit anything further in support of issuing the 2 Month Notice the Owner stated that he could have his Witness call into the hearing. The Resident Manager interrupted and stated their Witness was "calling into the hearing right now".

The Witness called into the teleconference and identified himself using his nick name as shown in brackets on the front page of this Decision. The Witness provided his legal first name and confirmed those were the only two first names he had ever used or been identified by.

The Witness began his submissions stating that he had worked for the Landlords for approximately one year. He stated that he was a self-employed electrician who was semi-retired and who had done maintenance work for the Landlords. From this point onwards the Witness's testimony was fragmented and he continuously stalled or paused when presenting his testimony.

After a brief pause the Witness stated he was a 63 year old man doing "jobs, electrical, and maintenance" work for the Landlords. He confirmed he had not signed an employment contract with Landlords. I asked the Witness if he had been looking for a new place to live. The Witness began to answer my question immediately saying he had been looking for a new place to live for the last few months and then he completed stopped his submission mid-sentence. After a pause he continued his testimony to say he was going to get a reduction in rent to do clean up and contract work.

Given the Witness's hesitation when providing his testimony I asked the Witness if there was anyone else in the room with him to which he answered, "No I am sitting in my car". When I asked where he was located he stated he was in a specific municipality. He continued his submission stating again that he was a semi-retired electrician doing contract work.

When I explained to the Witness that his testimony was being provided in a manner that was indicative of someone coaching him or providing him information on what to say he stated that he was alone, standing on a street corner near a mall in a completely different municipality than what he stated earlier. He then stated that he was told to call into this hearing at 11:00 a.m. and that is what he did.

The Tenant disputed the Landlords' submissions and argued that he was of the opinion that the Landlord wanted them to move out so they could raise the rent and because of their complaints about not having repairs completed. The Tenant asserted that his \$715.00 monthly rent was much lower than the \$1,000.00 the Landlords were charging for other one bedroom units in the building.

The Tenant testified that his father was his co-Tenant and their main issue was the Landlords ignoring their repair requests. He stated that his father had called the Health Authority to conduct health inspections on their rental unit. The Tenant submitted copies of the Health Authority letters after inspections had been completed in 2015 and 2016. He stated that his father had called the Health Authority as recently as October 2016 when an exterior water main broke and in late summer when their rental unit had been subject to a rodent infestation after the Landlords removed pieces of the exterior patio providing space for the rodents to enter the

building. He clarified that the Landlords had recently resolved the rodent issue after the Health Authority became involved. He stated that his father had been in contact with the Health Authority before and after receiving the 2 Month Notice.

The Landlords confirmed the other one bedroom units in their building were commanding rents of approximately \$1,100.00. They submitted that those units had been fully renovated apartments so that is why their rent was higher. The Landlords stated that there were only 10 units out of the 51 units that had not yet been renovated.

The Landlords pointed to the Health Authority letters and argued that those letters indicated the rental unit was classified as being "in living condition" and that there were problems due to "the poor situation of the Tenant's unit". The Landlords stated they had had approximately four meetings with the Health Authority after the Tenants complained during 2015 and 2016.

In closing, the Owner asserted the Resident Manager needs help and their Witness was looking for an apartment around the same time the manager requested assistance. The Owner argued that although their Witness was not able to clearly articulate his submissions they need to put someone in the building to assist with the increased crime. He asserted the Tenant's rental unit was the best location as it was near the most commonly used entrance and parking garage.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

When a tenant disputes a 2 Month Notice to end tenancy, the landlord bears the burden of proof that the Notice was given in good faith. Residential Tenancy Policy Guideline 2 provides that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. I concur with the aforementioned and find this Policy is relevant to the issues before me.

Based on the aforementioned good faith requirement, the Landlords bear the burden to prove the following two part test:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
- 2) The Landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

When determining the good faith requirement I cannot consider the 2 Month Notice issued October 28, 2016 in isolation. I must consider the events of this tenancy as a whole and leading up to the issuance of this 2 Month Notice.

First, the undisputed evidence was the co-Tenant had called the Health Authority on at least four occasions causing Health Inspections to be conducted on the rental unit. I do not find it a mere coincidence that one of the recent calls and/or inspections occurred shortly before the issuance of the 2 Month Notice. Rather, I conclude these events support the presence of an ulterior motive prior to the issuance of the 2 Month Notice.

Second, there was insufficient evidence before me that the Resident Manager's husband recently acquired new employment or that his employment change would affect the Resident Manager's workload in the building. I note that the fact the Resident Manager had small children had not changed in the months leading up to the Tenant being issued the 2 Month Notice. Furthermore, there was insufficient evidence to prove events at the rental unit building or property, criminal or otherwise, had increased the Resident Manger's workload.

The Witness stated that he was told to call into the hearing at 11:00 a.m. so that is what he did; however, the Witness did not call into the hearing until approximately 11:12 a.m. It was during the Owner's submissions when he asked if his witness should call into the hearing that the Resident Manger interrupted and stated the Witness was calling into the hearing right at that moment. That statement indicated the Resident Manger had communication with or could see the Witness calling into the hearing.

After consideration of the manner in which the Witness presented his evidence, I did not accept the Witness's explanation that he was not near someone during his submissions or that he was not being guided on what to say. Given my experience, the Witness's pauses during his oral submissions and what he stated immediately following those pauses were indicative of someone being guided on what to say.

In addition, the written submission allegedly written and signed by the Witness listed a different spelling for his first name or nickname than provided by the Witness during his oral submission. Also, the Witness randomly stated that he would receive reduced rent for work performed, as if guided to make that statement before he forgot.

I do not find that it was a mere coincidence that the Witness had been looking for another place to live around the same time the Health Authority had been on site to conduct another inspection. From his own submissions, the Witness was a 63 year old semi-retired electrician who had been looking for a new place for several months. He stated he had not signed an employment contract with the Landlords and despite being given the chance to elaborate further on his arrangement with the Landlord the Witness made no other submissions of the alleged agreement for his services.

I find there was insufficient evidence to prove the Witness was going to occupy the rental unit and be employed as a caretaker, manager or superintendent for the entire building. Rather, I found the Witness's submissions to be more indicative of someone who may have entered into an agreement to rent an apartment with the offer to conduct required repairs on that specific apartment in order to secure a rental unit in the building as a tenant, rather than entering into an employment contract to be a manager, caretaker, or superintendent of the entire building.

After consideration of the totality of the evidence before me I conclude there to be insufficient evidence to prove the October 28, 2016 Notice was issued in good faith for the reasons stipulated on the Notice. Therefore, I find in favor of the Tenant's application and order that that the 2 Month Notice issued October 28, 2016 be cancelled.

Having found in favor of the Tenant's application, I dismiss the Landlord's application, without leave to reapply.

### Conclusion

The Landlords were found to have submitted insufficient evidence to prove the good faith requirement of the 2 Month Notice issued October 28, 2016. That 2 Month Notice was cancelled and is of no force or effect. The Tenant's request for repairs was dismissed, with leave to reapply.

This decision is final, legally binding, and 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: January 03, 2017

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Residential Tenancy Branch