



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Witmar Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNR, CNC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities, an order cancelling a notice to end the tenancy for end of employment, and to recover the filing fee from the landlord for the cost of the application.

One of the tenants attended the hearing and represented the other tenant. An agent for the landlord also attended, and each gave affirmed testimony. The landlord's agent also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to make submissions.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for End of Employment was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord's agent** (WW) testified that this tenancy began in June, 2015 and the tenant still resides in the rental unit. The rental unit is a suite in an apartment complex containing 186 units, and the tenants were employees of the landlord. Rent was subsidized by the landlord as part of the employment arrangement, and the tenants' share was \$900.00 per month, payable on the 1<sup>st</sup> day of each month. No security deposit or pet damage deposit were collected by the landlord.

The tenants ceased to be employees of the landlord company at different times, however employment with the last employee ended in March, 2017. The tenants wanted to remain in the rental unit, and the parties had discussions about how much the rent would be. The tenant agreed to \$1,350.00 per month commencing with April 1, 2017. A copy of the email has been provided as evidence for this hearing, which agrees to that amount including parking. The tenants only paid \$900.00 each month for the months of April, May, June and July, 2017, leaving now a balance due of \$2,000.00.

On May 16, 2017 the landlord's agent served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to one of the tenants. A copy has been provided and it is dated May 16, 2017 and contains an effective date of vacancy of May 22, 2017 for unpaid rent in the amount of \$1,410.00 that was due on May 1, 2017. The landlord's agent testified that the amount includes \$25.00 late fees for each of April and May. The landlord hadn't agreed that parking was included and the tenants have 2 vehicles. Parking costs are \$25.00 per month per spot.

Also on the same date, the landlord's agent served the same tenant with a One Month Notice to End Tenancy for End of Employment, and a copy has been provided for this hearing. It is dated May 16, 2017 and contains an effective date of June 30, 2017. The reasons for issuing it state:

- Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent;
- Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.

The tenants agreed to remain for emergency purposes after the end of employment and retained master keys. The landlord's agent further testified that another previous employee shredded the landlord's documents, including the employment agreements with these tenants.

**The landlord's first witness** (LT) is an accounting employee for the landlord and testified that the tenants pay rent in the amount of \$900.00 per month due by the 1<sup>st</sup> of each month, and arrears are currently \$2,065. The tenants paid \$900.00 on April 1, 2017, but rent is \$1,350.00, in addition to \$30.00 for late fees and \$30.00 for parking. That leaves arrears outstanding of \$510.00, and the same applied to May, June and July, 2017. There is no tenancy agreement.

**The landlord's second witness** (GW) testified that he is also an employee with the landlord company, and started the employment after the tenants' employment commenced. He believes that the tenants knew that the employment contracts included an agreement that the tenants had to give up their tenancy at the end of employment; other employees were aware of that.

**The tenant** testified that there was an employment contract but the tenant didn't sign it or sign anything agreeing to move out. The tenant asked the landlord's agent if the tenants could stay, and he agreed. The tenants agreed to stay for emergencies. When the landlord's agents asked for the keys back, they were given back within hours.

The tenant further testified that he agreed to pay \$1,350.00 including parking but there was no communication from the landlord's agents after that and no further agreement. The tenants paid \$900.00 in April, May, June and July and the landlords issued receipts for use and occupancy only.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which specifies in what cases a landlord can end a tenancy:

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

In this case, the landlord relies on Section 48 – landlord's notice, end of employment, which states:

**Landlord's notice: end of employment with the landlord**

- 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.

Section 48 (1) puts the onus on the landlord to establish good faith intent to provide the rental unit to a new caretaker, manager or superintendent. The landlord is not intending to use the rental unit for the new caretaker, manager or superintendent. Therefore, subsection (2) applies, requiring the landlord to give a notice to end the tenancy, and that has been done.

I have reviewed the One Month Notice to End Tenancy for End of Employment, and I find that it is in the approved form and contains information required by the *Act*. The parties agree that rent was subsidized by the landlord during employment, and the tenants' share was \$900.00, therefore I find that the rental unit was rented or provided by the employer to the employee to occupy during the term of employment, and I find that the landlord is well within his rights to issue the notice to end the tenancy. The tenants' application to cancel it is dismissed.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant the landlord an Order of Possession. Since the effective date

of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

Having granted the Order of Possession, it is not necessary to rule on either 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, and since the tenants have not been successful with the application, the tenants are not entitled to recovery of the filing fee.

With respect to any rent due to the landlord, I have no application, and decline to make any findings of fact or law with respect to the merits of the landlord's testimony and evidence in that regard.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

This order is final and binding and may be enforced.

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 12, 2017

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Residential Tenancy Branch