



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding S-8133 Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNL; OLC; FF

### **Introduction**

This is the Tenant's Application for Dispute Resolution made January 17, 2018. The Tenant seeks to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property issued January 2, 2018 (the "Notice"); for an Order that the Landlord comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Both parties attended the Hearing and gave affirmed testimony. The parties were advised how the Hearing would proceed and were given the opportunity to ask any relevant questions they might have about the hearing process.

The Landlord's agent acknowledged service of the Tenant's Notice of Hearing and a copy of her Application, by registered mail sent on January 22, 2018. The Landlord also received copies of the Tenant's documentary evidence, which were hand delivered to another agent of the Landlord ("William"), on March 3, 2018.

The Tenant acknowledged receipt of the Landlord's documentary evidence, by registered mail sent on March 5, 2018.

The Tenant seeks an Order that the Landlord comply with the Act, regulation or tenancy agreement; however, the Tenant did not provide details on her Application for Dispute Resolution with respect to which section of the Act, regulation or tenancy agreement she seeks compliance. Therefore, this portion of her Application is dismissed.

### **Issue(s) to be Decided**

Is the Notice a valid notice to end the tenancy under Section 49 of the Act?

### **Background and Evidence**

Both parties provided extensive oral and written testimony with respect to this matter. In this Decision, I have recorded only the testimony that is relevant to the Tenant's Application.

This tenancy began as a one year fixed term lease, commencing January 1, 2016, and ending on December 31, 2016. This tenancy agreement was signed by the parties on November 25, 2015. Monthly rent was \$2,500.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$1,250.00 on November 30, 2015.

The parties entered into a second tenancy agreement on January 2, 2017. This tenancy began on January 1, 2016 and is for a fixed term, ending December 31, 2017. Monthly rent is \$2,600.00, due on the first day of each month. The security deposit transferred from the first tenancy agreement. No additional security deposit was paid.

A copy of both of the tenancy agreements were provided in evidence.

On or about October 31, 2017, the Landlord sent the Tenant an e-mail advising:

Tuesday, Oct 31 • 4:05 PM

Hi Sharon your current lease is coming to an end. The owner would like to see if you wanted to sign another year lease. However the rent will 3000 due to inflating market rental rates. Let me know thanks

The Tenant gave the following reply:

Tuesday, Nov 7 • 11:02 AM

Hello Anson, as you know I'm not able to afford a \$400 increase in rent. I would like to give notice of 4 weeks from the 15 December which is the original date that I moved in. That will give me the time I need to settle my kids into the new place before Xmas. Please let me know if this is ok

On November 8, 2017, the Tenant sent another e-mail to the Landlord's agent AT advising that she had an appointment to sign a new tenancy agreement with her new landlord, but that if her current Landlord was "interested in keeping me", she would agree to pay \$2,700.00. She also advised that she would not sign another tenancy agreement with a "move out clause" and that she wanted a month to month tenancy.

On November 11, 2017, the Landlord's agent AT replied to the Tenant's e-mail by proposing that the Tenant pay \$2,900.00, but that the new agreement would have to be a fixed tenancy with a "move out clause".

The parties negotiated back and forth. The Tenant testified that she ultimately decided not to rent elsewhere and that the parties agreed that her notice to end the tenancy on December 15, 2017, was no longer effective.

On December 9, AT sent the Tenant the following e-mail:

Hi Sharon . Can you contact William to set up a time to pick up the cheque. Also please confirm are you going to resign the lease at 2900 a month with the box checked for lease to end after a contract ends. Meaning new lease to be resigned every year. Since I personally spoke with the owner to give this extension he has asked for the answer of the lease under terms that I just stated by next monday Dec 11. If no answer is given. The lease will be terminated at the end of january. Thanks !

On December 11, 2018, the legislation changed with respect to the validity of fixed term tenancies with “move out” clauses at the end of the fixed term. The new legislation prohibits a “move out” clause except for under specific circumstances. The new legislation provides that a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term only if that landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term. The Tenant submitted that she was suspicious of the timing of the Landlord’s deadline for signing a new tenancy agreement because it was the same date that the new legislation took effect.

The Landlord’s agent AT testified that when the Tenant advised that she would not be signing another fixed term lease, the Landlord decided that the Tenant had “caused us too much work already” and that the Landlord told AT that he would “use the unit for [his] own son to move in rather than renting it out since he was already looking for a

place for his son to stay". The Landlord's agent stated that it was "just a coincidence" that the date of the new legislation was the same date that the Landlord had chosen as a deadline for signing the new lease.

The Tenant is seeking to cancel the Notice because the "claim was made within 10 minutes of me declining to sign a new lease. I wish to continue to live at the property. This has caused me and family immense stress. I have proof of numerous texts that until that day when I refused to sign a new lease, the landlord had agreed that I could remain at this property." The Tenant stated that AT advised her that the Landlord's son was moving to Canada from China and would be occupying the rental unit. The Tenant stated that she does not believe the Landlord's son is moving into the rental unit. She stated that she believes the Landlord wants more money for the rental unit. The Tenant questioned the "good faith intent" of the Landlord.

AT advised that the Landlord's son and his family were already in Canada and were currently living with the Landlord in the Landlord's home. He stated that the Landlord is aware that his son would have to live in the rental unit for a period of at least six months.

The Landlord is a corporate landlord. The Tenant asked AT what the nature of the corporation was and if AT had a familial relationship with a director of the Landlord. The Tenant asked which son was intending to move into the rental unit and whether there were more than two sons. She asked if "William" was the son who would be moving in. In the Tenant's Application, the Tenant wrote:

"I am unsure of who owns the property that i am currently a tenant in. My research landlord company reveals multiple names in numerous land development applications in LMD/Fraser Valley region. I'm unsure how to ascertain a family relationship exists."

[Reproduced as written.]

AT declined to answer how he was related to the Landlord, stating that he was not required to do so. He stated, "I will not disclose it. I am related, but not the one moving in." He stated that the Landlord has three sons.

I asked AT if the person owning voting shares in the family corporation, or that person's son, was available at this time to give oral testimony, and the Landlord's agent replied, "no".

## **Analysis**

When a tenant seeks to cancel a notice to end the tenancy, the onus is on the Landlord to provide sufficient evidence that the tenancy should end for the reason(s) provided on the notice.

The Notice gives the following reason for ending the tenancy:

| REASON FOR THIS TWO MONTH NOTICE TO END TENANCY (check the box that applies) |  |
|--|--|
| <input checked="checked" type="checkbox"/>                                   | The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).                |
| <input type="checkbox"/>   | The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. |

Section 49(1) of the Act provides, in part:

### **Landlord's notice: landlord's use of property**

**49** (1) In this section:

**"close family member"** means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

**"family corporation"** means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

I find that the Notice is not a valid notice to end the tenancy for the following reasons:

1. The Landlord did not tick the correct box on page 2 of the notice (as provided above). The Landlord is not an individual and therefore the first box does not apply.
2. Even if the first reason listed above did not apply, the Landlord did not provide sufficient evidence that the Landlord is a "family corporation and a person owning voting shares in the corporation, or a close family member or that person, intends in good faith to occupy the rental unit". When given an opportunity to provide oral testimony with respect to such evidence, the

Landlord's agent declined to give any supporting evidence. He also acknowledged that neither the person owning voting shares nor that person's son was available to give testimony and to be cross-examined by the Tenant.

Therefore, for the reasons outlined above, **the Notice is cancelled.**

Having found that the Notice is not valid, it is not necessary for me to decide the "good faith" intent of the Landlord.

The Tenant has been successful in her Application to cancel the Notice and I find that she is entitled to recover the cost of the **\$100.00** filing fee from the Landlord.

### **Conclusion**

The Two Month Notice to End Tenancy for Landlord's Use issued January 2, 2018, is cancelled. **The tenancy will continue until it is ended in accordance with the provisions of the Act.**

Further to the provisions of Section 72 of the Act, **the Tenant may deduct \$100.00, representing recovery of the filing fee, from future rent due to the Landlord.**

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: March 19, 2018

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Residential Tenancy Branch