



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WING YIP ENTERPRISES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord is a commercial entity represented at the hearing by its agents S.Y. and P.Y., herein referred to as "the landlord".

As both parties were in attendance, service of documents was confirmed. The parties confirmed that the tenant's Notice of Dispute Resolution Proceeding package and evidence was served on the landlord, and the landlord's evidence was served on the tenant, in accordance with section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the cost of the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 30, 1998. Monthly rent in the amount of \$835.00 is payable on the first day of each month. The tenant pays an additional \$25.00 per month for parking. A security deposit of \$265.00 was paid by the tenant at the start of the tenancy and continues to be held by the landlord. The tenant continues to reside in the rental unit. A written tenancy agreement was signed by the tenant and the former landlord and a copy was provided for this hearing. The current landlord purchased the rental building in 2008 and assumed this tenancy from the former landlord, including the security deposit.

On February 26, 2018, the tenant confirmed that she received the landlord's Two Month Notice posted on her door. The tenant provided a copy of the landlord's Two Month Notice, which states an effective move-out date of April 30, 2018, indicating the following reason for seeking an end to this tenancy:

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

On March 1, 2018, the tenant submitted an application with the Residential Tenancy Branch to dispute the notice on the grounds that the landlord did not issue the notice in good faith. The tenant submits that as she has been a tenant for almost 20 years and pays the lowest rent in the building, the landlord wishes to evict her so they can re-rent the unit at a higher rent.

Further to this, the tenant's application alleges that the landlord has issued the notice in reprisal for her successfully disputing the landlord's previous Residential Tenancy

Branch (RTB) application for an additional rent increase in November 2017 (file number noted on the coversheet of this decision), as well as being one of only two out of 41 units that refused to agree to the voluntary rent increase requested by the landlord.

The tenant testified that she has complied with all the regular annual legislated rent increases that have been applied to her monthly rent every year that she has resided in the building. However, in spring 2017, the landlord approached the tenant and the other long-term tenants to request that they voluntarily comply with an additional rent increase significantly above the regular annual rent increase allowed under the *Act*. The tenant provided documentary evidence in the form of a letter received from the landlord, which confirms the tenant's testimony. An excerpt of that letter is provided below:

*We are currently renting newly renovated 1 bedroom apartments for \$1300.00 and up depending if there is a view.*

*We would like to bring your rents more in line with the current market rates.*

*Respecting your long term stay here, we would like to raise your rents between 10-20%, instead of this year's allowable rate of 3.7% set by the Residential Tenancy Board.*

*We would like to come to an agreement with you on your new rent level but if we cannot agree, we will apply to the Residential Tenancy Board for what is called " An Additional Rent Increase" to adjust your rent to current market levels.*

The tenant testified that in response to this letter, she offered to agree to a 5% increase. She explained that she is a hairdresser, who after many years working in the profession has developed chronic pain in her neck and shoulders, and can only work part-time, therefore she has a very limited budget and this was the best she could offer. The tenant stated that the landlord would not accept her 5% offer and went forward with an application to the RTB for an additional rent increase to be applied against her unit and the unit belonging to the one other tenant who also did not agree to the additional rent increase. The tenant claims that all the other long-term tenants in the building agreed to the requested voluntary additional rent increase as they were afraid of being evicted and did not have the time to go through the formal dispute process.

The tenant stated that when the landlord followed through with their application for an additional rent increase, she attended the hearing to dispute the request. The tenant

submitted into evidence the RTB decision dated November 20, 2017, in which the landlord's application for the additional rent increase was dismissed.

The tenant alleges that the landlord has an ulterior motive in issuing her a Two Month Notice to end her tenancy. In support of this allegation, the tenant points to the landlord's timing in claiming that there is now an urgency to replace the live-in caretaker who resigned two years ago, and that her unit has been targeted even when a vacant one-bedroom unit was available.

The tenant asserts that the landlord's real reason for taking action at this time is because she pays the lowest rent in the building, she refused to agree to a 10-20% voluntary additional rent increase, and she recently successfully disputed the landlord's formal request for an additional rent increase through the RTB process.

The tenant provided testimony calling into question the current timing of the landlord's decision to pursue a replacement for a live-in caretaker given that it has been almost two years since the last live-in caretaker resigned, and some of the job duties noted for the new live-in caretaker have been undertaken by a tenant couple in the building contracted to perform cleaning services and the lawn is mowed through a service contract.

In support of her allegations, the tenant submitted into evidence information that another one-bedroom unit became vacant on April 1, 2018, which could have been used for the purposes of a caretaker unit and would therefore not have required the tenant to have to vacate her unit at the end of April 2018.

The landlord stated that the selection of the tenant's rental unit for conversion to the caretaker unit was not a personal decision, but a business decision based on the fact that the tenant pays the lowest rent in the building, and that her unit is located on the second floor which is the middle floor of the three-storey building, whereas the vacant unit was located on the third floor. The landlord submitted into evidence a document ranking all the rental units in order of the amount of rent paid. The landlord pointed out that there were no names attached to the list, and that they are picking the lowest paying unit according to the list. The landlord testified that he offered to provide the tenant with an extra month of free rent, in addition to the one month of free rent required as compensation under the *Act* when a landlord issues a Two Month Notice, as a goodwill gesture to show the decision was not personal.

The landlord stated that since the last live-in caretaker resigned in April 2016, they have been struggling to manage the workload given their family care-giving responsibilities. They stated that the reason it has taken almost two years to fill the position is because they have been unable to find qualified candidates willing to accept the wage they are offering.

When asked to explain why they had not used the rental unit that became vacant on April 1, 2018, for the live-in caretaker unit, the landlord stated that the newly hired caretaker was unavailable to start work until May 1, 2018, and they did not want to lose one month's rent. Further to this, the landlord provided calculations to show that the vacant unit could be rented out at the current market rental rate of \$1,380.00.

The landlord testified that the live-in caretaker position has now been filled by the grandson of the owner of the building, who has just recently graduated from university and has very limited experience in this field.

A basic employment contract signed by the new caretaker was entered into evidence in support of this testimony. However, the landlord testified that details pertaining to the pay, benefits, vacation entitlements and requirement in the contract for the caretaker to live in the building were purposefully deleted to maintain the confidentiality of the information. The landlord could only provide verbal testimony that the agreement has a requirement for the caretaker to live in the building and that he would receive a significant discount on rent in the amount of 50%.

The landlord was forthcoming to confirm that this rent discount was only provided because the caretaker is a family member. The landlord explained the hiring choice by stating that it is a family-run business and they are hoping for the next generation of the family to gain experience working in the business.

Regarding the tenant's allegation that the landlord is targeting her because she refused to agree to a voluntary additional rent increase, the landlord stated that he offered the tenant two months' free rent, instead of the mandatory one month's rent as a goodwill gesture to show that the decision was not personal.

In summary, the landlord stated that their intention is "not to deprive someone of their home", but that they are making a "fair and cost-effective decision in order to make the most money".

## Analysis

Subsection 49(6)(e) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord intends, in good faith, to convert the rental unit for use by a caretaker/manager of the residential property.

According to subsection 49(8) of the *Act*, a tenant may dispute a Two Month Notice by making an application for dispute resolution within 15 days after the date the tenant received the notice. The tenant received the Two Month Notice on February 26, 2018 and filed her application to dispute it on March 1, 2018. The tenant's application has been submitted within the 15-day time limit provided under the *Act*.

The tenant's application calls into question the good faith intention of the landlord in issuing her with this Two Month Notice as she submits that it is in reprisal for her refusal to agree to the landlord's prior request for a voluntary additional rent increase, which subsequently became a formal request through the RTB for an additional rent increase that was disputed by the tenant and ultimately dismissed as a result of an RTB decision issued in November 2017.

The tenant pointed to the timing of the landlord's notice to end her tenancy only a couple of months after the dismissal of the landlord's additional rent increase request as evidence of the landlord's ulterior motive to seek retribution against her for not agreeing to pay a higher rent than required by law, with the goal of being able to re-rent her unit in future at the much higher current market rates.

Therefore, the burden of proof shifts to the landlord to establish their good faith intent in issuing the Two Month Notice to end the tenancy.

Residential Tenancy Policy Guideline 2. Ending a Tenancy: Landlord's Use of Property states:

*Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.*

...

*If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on*

*the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.*

In the weighing of the evidence and testimony of both parties, I find that the landlord was unable to provide sufficient evidence to prove, on a balance of probabilities, meaning more likely than not, that the Two Month Notice was issued to the tenant in good faith.

My finding was determined on an assessment of the circumstances surrounding two key aspects in this matter, namely the landlord's decision to choose the tenant's unit instead of the vacant unit for use as a caretaker unit, and the recent attempts by the landlord to increase the tenant's rent significantly.

First, a one-bedroom rental unit in the building was vacant and available as of April 1, 2018. The landlord had the opportunity to convert this vacant unit to use as a caretaker unit and thereby not cause any tenants to be displaced. The landlord made a choice not to use this unit, but rather issue a Two Month Notice to the tenant requiring her to move out by April 30, 2018.

The landlord explained that the choice to not use the vacant unit was a business decision as they did not want to lose one month's rent, since the caretaker was unable to start until May 1, 2018, and that they could make more money by putting that unit back on the market and converting the tenant's unit into a caretaker unit as her rent was the lowest in the building.

The landlord provided documentary evidence of calculations in support of this business decision rationale. The landlord's calculations show a comparison of "total lost income potential" between the vacant unit and the tenant's unit, based on foregoing all rental income for the units over 12 months and further includes the loss of April rent for the vacant unit.

However, the landlord's calculations would seem to indicate that the caretaker would not pay any rent at all as the calculations for "total lost potential income" are based on the full monthly amount of rent being "lost", which conflicts with the landlord's testimony that during the search to fill the position of a caretaker, they were willing to provide a monthly rental subsidy of between \$200.00 to \$500.00 as part of the compensation package, depending on the candidate.

While the landlord was forthcoming in confirming that the newly hired caretaker would receive a 50% rent discount because he is a family member, I note the landlord submitted into evidence the employment contract excluding relevant clauses such as the specified need to have the caretaker live on site. As such, I am not satisfied that this is a requirement of the position or therefore a need to end this tenancy.

I find the fact that the calculations submitted by the landlord, upon which the business decision was predicated, are based on no rent being paid. This casts doubt on the landlord's intent to truly use the tenant's unit as a caretaker unit over the long term, rather than as an opportunity to provide free or highly subsidized lodging for a family member in the short term. If the business decision was based on financial calculations of lost income as a result of installing a caretaker in the building, I expect that the presented scenarios would have factored in a realistic rent subsidy to be allowed as part of the caretaker's compensation.

I further find that the landlord's current approach choosing to displace a tenant rather than use a vacant unit to accommodate the caretaker is a contradiction to their prior business practice under similar circumstances, that being a vacant unit is available at the time the landlord hires a caretaker. This gives weight to the tenant's assertion that she is being targeted for eviction in reprisal for her refusal to accept a significant additional rent increase.

The former live-in caretaker was hired around 2012, after the building had been without a live-in caretaker for about one year following the retirement of the previous live-in caretakers in 2010. The landlord testified that at the time they found the former live-in caretaker, a unit had become vacant and was being renovated, and it was this vacant unit that was used to accommodate the former caretaker and his wife.

The landlord argued that in the present situation, the newly hired live-in caretaker was not available to start until May 1, 2018, which would cause them to lose one month's rent while the vacant unit sat empty for a month, and that they did not wish to lose this income. As well, the tenant pays below current market rates whereas the vacant unit could be rented at the currently higher market rates.

I find the magnitude of the landlord's financial concern over the forfeiting of one month's rent by allowing the vacant unit to sit empty for a month a contradiction to the goodwill offer put forward by the landlord to offer the tenant an extra month of free rent as compensation for the Two Month Notice.



I find the landlord's financial concern argument further contradicted by the fact that the landlord is providing the new caretaker with a 50% rent subsidy. It is incongruent that the landlord's cost concerns over the loss of one month's rent is a central consideration in their rationale to choose the tenant's unit over the vacant unit, while at the same time, the landlord is willing to provide the tenant with an extra month of free rent, and to subsidize the new caretaker's rent by 50%.

Second, the landlord's actions to try to increase the tenant's rent beyond the allowable annual increase calls into question the landlord's stated rationale that the timing of the issuance of the Two Month Notice was unrelated to the tenant successfully disputing the additional rent increase application and that the decision was purely a business decision not a "personal" decision with the ulterior motive of evicting the tenant who pays the lowest rent in the building.

The landlord began recruiting for a new live-in caretaker in 2016, but as the search failed to yield a suitable candidate, the landlord's agents continued to assume the caretaker duties. In spring 2017, the landlord requested that the tenant voluntarily accept a significant additional rent increase between 10-20%. The tenant offered to voluntarily accept a 5% rent increase, but this offer was rejected by the landlord.

Subsequently the landlord applied to the RTB for an additional rent increase which would have amounted to approximately a 45% increase in the tenant's rent. The tenant disputed the rent increase and the landlord's application was dismissed.

In February 2018, approximately two months after the RTB issued its decision dismissing the landlord's application for an additional rent increase, the landlord decided to appoint a family member into the position of caretaker, and then issued the tenant with a Two Month Notice. The fact that the Two Month Notice was issued almost two years after the former live-in caretaker resigned, yet only two months after the landlord's application for an additional rent increase for the tenant's unit was dismissed, and in spite of the fact that a qualified live-in caretaker candidate was not found through the job posting process, raises sufficient concern that the landlord has an ulterior motive in ending the tenancy.

Further, these actions and the timing of these actions lends credence to the tenant's allegations that the landlord's desire to end the tenancy is in reprisal for the tenant's refusal to accept a significant additional rent increase, and calls into question the long-term plans for having a live-in caretaker at the building.

The contradictions and discrepancies between the stated rationale and the actions of the landlord support the tenant's allegation of ulterior motives behind the landlord's request to end the tenancy.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met the burden of proof to show that their intention to convert the rental unit for use by a caretaker, manager or superintendent of the residential property is being done in good faith.

Accordingly, I allow the tenant's application to cancel the landlord's Two Month Notice. The Two Month Notice to End Tenancy for Landlord's Use of Property, dated February 26, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for landlord's use of property. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenant's application to cancel the landlord's Two Month Notice is allowed.

I order the tenant to deduct \$100.00 from a future rent payment at the rental unit, in full satisfaction of the monetary award issued against the landlord for the 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: May 22, 2018

---

Residential Tenancy Branch