



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 12 Oaks by Marquee Development  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNL; FF

### **Introduction**

This is the Tenants' Application for Dispute Resolution seeking to cancel a Notice to End Tenancy for Landlord's Use of Property and to recover the cost of the filing fee from the Landlord.

Both of the parties attended and gave affirmed testimony at the Hearing which took place by teleconference. The hearing process was explained and the parties were given an opportunity to ask questions about the process.

It was determined that the Tenants hand delivered the documents to the building manager shortly after they made their Application. The parties acknowledged receipt of each other's documentary evidence.

### **Preliminary Matter: Jurisdiction**

The Respondent's agent IE gave the following submissions:

IE submitted that the Residential Tenancy Act has no jurisdiction over this matter.

IE testified that the subject property is a 30 unit building which was purchased by the Respondent in May, 2017, and then "leased back" to the occupants (the previous owners). She submitted that, as part of a purchase and sale agreement, the units were rent-free for the first three months, after which each previous owner signed a fixed term tenancy agreement for a period of time, which varied from previous owner to previous owner.

IE testified that after the initial three month period, the Applicants entered into another tenancy agreement, commencing August 26, 2017 and ending May 25, 2018. There were two tenancy agreements signed, copies of which were provided in evidence. The first agreement indicates a rent of "0", and that a security deposit of \$1,278.75 and a pet damage deposit of \$1,278.75 were taken. The agreement also provides that the Tenants must move out of the rental unit at the end of the term.

However, the Applicants were not required to move out at the end of the three month rent-free period. The second agreement indicates:

**2. LENGTH OF TENANCY** (please fill in the dates and times in the spaces provided)

This tenancy starts on:     
day month year

Length of tenancy: (please check a or b or c and provide additional information as needed)  
 This tenancy is:

☐ a) on a month-to-month basis

☒ b) for a fixed length of time:  ending on     
length of time day month year

At the end of this fixed length of time: (for option b, you must check either i or ii below)

☐ i) the landlord and tenant may agree to enter into a new tenancy agreement  
 • If the landlord and tenant do not enter into a new tenancy agreement, the tenancy continues on a month-to-month basis on the same terms unless the tenant gives legal written notice to end the tenancy.

☒ ii) the tenancy ends and the tenant must move out of the residential unit  
 • If you choose this option, both the landlord and tenant must initial in the boxes to the right  
 The tenant must move out on or before the last day of the tenancy.

Landlord's Initials   
Tenant's Initials

☐ c) other periodic tenancy as indicated below:  
☐ weekly ☐ bi-weekly ☐ other:

With respect to rent, the second tenancy agreement provides:

**3. RENT** (please fill in the information in the spaces provided)

a) **Payment of Rent:**  
 The tenant will pay the rent of \$  each (check one) ☐ day ☐ week ☒ month to the landlord on the first day of the rental period which falls on the (due date, e.g., 1st, 2nd, 3rd, .... 31st)  day of each

(check one) ☐ day ☐ week ☒ month subject to rent increases given in accordance with the RTA.

The tenant must pay the rent on time. If the rent is late, the landlord may issue a *Notice to End Tenancy for Unpaid Rent* (form RTB-30) to the tenant, which may take effect not earlier than 10 days after the date the notice is given.

b) **What is included in the rent:** (Check only those that are included and provide additional information, if needed.)  
 The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Heat	<input type="checkbox"/> Cablevision	<input type="checkbox"/> Window coverings	<input type="checkbox"/> Sheets and Towels
<input checked="" type="checkbox"/> Sewer	<input checked="" type="checkbox"/> Stove and oven	<input type="checkbox"/> Internet	<input type="checkbox"/> Furniture	<input type="checkbox"/> Other: <input type="text"/>
<input checked="" type="checkbox"/> Garbage collection	<input checked="" type="checkbox"/> Dishwasher	<input checked="" type="checkbox"/> Storage	<input type="checkbox"/> Carpets	
<input checked="" type="checkbox"/> Electricity	<input checked="" type="checkbox"/> Refrigerator	<input type="checkbox"/> Laundry (free)	<input checked="" type="checkbox"/> Parking for <input type="text" value="1"/> vehicle(s)	<input type="checkbox"/> Other: <input type="text"/>

☐ Additional information:

El submitted that the “tenancy agreements” were used by the Respondent as a convenient method to “collect data with respect to the relationships between the [previous owners] and the [Respondent]”. She submitted that the arrangement was part of the negotiation of the purchase and sale agreement and therefore was not a tenancy. El submitted that the Applicants are actually sellers and not tenants.

The Respondent provided a portion of the purchase and sale agreement. IE stated that the whole of the agreement was not provided in order to protect the privacy of the other previous owners. The portion provided is as follows:

#### **8.7 Leaseback to Unit Owners**

The Vendor and the Purchaser acknowledge that the Purchaser will not commence redevelopment of the Property upon the Completion Date. The Purchaser shall grant to each Owner of the Property the option to rent from the Purchaser, as landlord, the unit in the Property which is owned by such Owner prior to the Completion Date in each case for a fixed term not to exceed twelve (12) months, commencing on the Completion Date. Any Owner who exercises such right as contemplated herein is referred to as an “Owner Tenant” and a unit rented by an Owner Tenant as contemplated herein is referred to as a “Rental Unit”.

The monthly rent payable by each Owner Tenant will be as follows: (i) for a fixed-term tenancy of three (3) months or less, rent will be free; or (ii) for a fixed-term tenancy of more than three (3) months, the first three (3) months' rent will be free, and for the balance of the term, rent will be \$2.50 to \$2.75 per square foot per month multiplied by the square footage of the Rental Unit rented by such Owner Tenant more particularly set out in Schedule C. Any existing registered owner of a unit in the Property who wishes to exercise such option to rent a Rental Unit on the terms set out herein must confirm his or her exercise of such option in writing, by way of the Vendor's Solicitors giving written notice to the Purchaser or the Purchaser's Solicitors of such exercise at least thirty (30) days prior to the Completion Date. The Purchaser and each Owner Tenant will execute and deliver a fixed-term tenancy agreement (which requires the Owner Tenant to vacate the Rental Unit upon the expiry thereof). Each tenancy agreement will provide that the Owner Tenant will not assign such tenancy agreement or sublet the Rental Unit or any portion thereof, and that the Owner Tenant acknowledges and agrees that it is reasonable for the Purchaser, as landlord, to refuse consent to any request for consent to any assignment or subletting. Each Owner Tenant will be responsible for all utilities and tenant's insurance during their tenancy period. Each tenancy agreement will provide that, notwithstanding such fixed term, the Owner Tenant will be able to terminate the fixed term tenancy agreement on written notice provided to the Purchaser on or before the 15<sup>th</sup> day of a month with such notice to be effective on the last day of such month. The tenancy agreements shall otherwise be on the form available on the website of the Residential Tenancy Branch. The Purchaser may offer vacated units to new third party tenants for fixed terms and on such terms and conditions as may be determined by the Purchaser in its discretion.

IE quoted from Residential Tenancy Policy Guideline 27, as follows:

“If the relationship between the parties is that of seller and purchaser of real estate, the legislation would not apply as the parties have not entered into a “Tenancy Agreement” as defined in Section 1 of the Act. It does not matter if the parties have called the agreement a tenancy agreement. If the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into.”

The Applicant PH gave the following reply:

PH submitted that the transfer of ownership referred to in Policy Guideline 27 was based on a “rent to own” relationship between a landlord and a tenant. He stated that it was not meant to apply to this particular situation.

PH stated that the Applicants were compensated as part of the sale by way of the three months’ free rent, and submitted that after that, they became tenants of the Respondent and should be protected under the Act.

Analysis on Jurisdiction

There is no reference to the purchase and sale agreement in the tenancy agreements.

The Act defines tenancy agreement as:

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

[Reproduced as written.]

I find that the Act does retain statutory jurisdiction in this matter. Title to the property passed in May, 2017, and I find that the Tenants are now occupying the rental unit under a licence to occupy, which is included in the definition of a tenancy agreement.

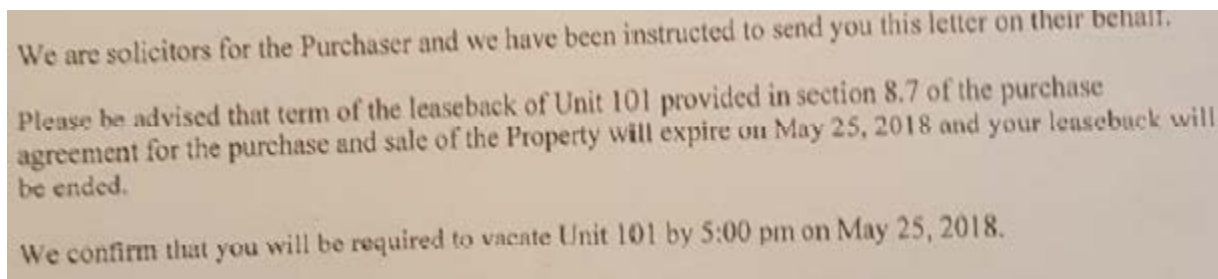
**Issue(s) to be Decided**

Is there a valid Notice to End Tenancy?



## **Background and Evidence**

The Tenant provided a copy of the notice to end the tenancy, which is a letter from the Landlord's solicitors dated March 1, 2018. The letter states:



We are solicitors for the Purchaser and we have been instructed to send you this letter on their behalf.

Please be advised that term of the leaseback of Unit 101 provided in section 8.7 of the purchase agreement for the purchase and sale of the Property will expire on May 25, 2018 and your leaseback will be ended.

We confirm that you will be required to vacate Unit 101 by 5:00 pm on May 25, 2018.

## **Analysis**

Section 52 of the Act provides:

### **Form and content of notice to end tenancy**

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) when given by a landlord, be in the approved form.

[Reproduced as written.]

I find that the letter provided to the Tenant by the Landlord's solicitor does not comply with Section 52(e) of the Act and therefore it is not a valid notice to end the tenancy.

The Tenants applied to cancel a Notice to End Tenancy for Landlord's Use of Property; however no such notice was issued. The Tenants are not legally obliged to vacate the rental unit unless and until a Notice is issued under the provisions of Section 44 of the Act.

I also note that the Act precludes “vacate” clauses unless they meet the requirements of the Act the regulation to the Act.

**Conclusion**

The Tenants’ Application is granted. The letter dated March 1, 2018, is of no force or effect to end the tenancy. It does not meet the requirements of Section 52 of the Act.

The tenancy will continue until it is ended in accordance with the provisions of Section 44 of the Act.

I find that the Tenants are entitled to recover the cost of the \$100.00 filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenants may deduct \$100.00 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: May 31, 2018

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Residential Tenancy Branch