



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Conn Lodge  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

Pursuant to section 9.1 (1) of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the tenant's application for:

- an Order that the landlord comply with the Act, regulations or the tenancy agreement pursuant to section 62 (3) of the Act;
- an Order cancelling a Two Month Notice to End Tenancy pursuant to section (8) of the Act; and
- recovery of the filing fee from the landlord pursuant to section 72 of the Act.

The landlord's agent and the tenant both attended the hearing by way of teleconference. The landlord's agent and the tenant were given a full opportunity to be heard, to present affirmed testimony, to make submissions and, to call witnesses.

### Issue(s) to be Decided

Is the tenant entitled to:

- an Order that the landlord comply with the Act, regulations or the tenancy agreement pursuant to section 62 (3) of the Act;
- an Order cancelling a Two Month Notice to End Tenancy pursuant to section 49 (8) of the Act; and
- recovery of the filing fee from the landlord pursuant to section 72 of the Act.

### Background and Evidence

Preliminary issue – last minute filing and lack of proof of service of evidence by landlord.

There is an affidavit of AA that was only filed by the landlord with the RTB office on June 25, 2018, some 7 days before this hearing. This is the last day for filing permitted by Rule 3.15 of the Residential Tenancy Branch Rules of Procedure ("the Rules").

No proof of service of this document was filed by the landlord. The agent for the tenant stated that he had adequate time to consider the one-page document as the tenant received a copy on June 27, 2018. He does point out that this is not an "AFFIDAVIT" and this is discussed further below.

I have decided that I will accept this document into evidence.

The landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property dated May 17, 2018, ("the Notice"). The Notice requires the tenant to move out of the rental unit by July 31, 2018, on the basis that "The rental unit will be occupied by the landlord or the landlord's close family member...".

On the Notice the landlord is stated as "CONN LODGE". This is not the name of an individual nor is it a legal company name.

On the document entitled "AFFIDAVIT" there is a reference to the landlord as being "[Redacted proper company name] b/o Conn Lodge Apartments". There is also a reference to the fact that this document is filed on behalf of the party "AHC Ltd."

During cross examination the agent for the landlord CT admitted that she is not a Notary or a Commissioner of Oaths although she is the person who purported to take the affirmed evidence of the deponent via the "AFFIDAVIT" on June 22, 2018. I find therefore that this document is not an affidavit but rather is simply a signed statement. The person who signed the "AFFIDAVIT" was not called as a witness at the hearing as he was said to be unavailable as he was in Europe.

The agent for the landlord gave a substantial amount of additional information beyond what is contained in the "AFFIDAVIT" based on what she said AA had told her. I do not accept this as evidence in this proceeding as it is hearsay and, it is not supported by the actual signed statement of AA as filed.

I also note that the signed statement of AA does not state that he is moving into the unit in question but only he is "...willing to move in...".

## Analysis

Based on my review of the documents filed and the oral evidence I find on the balance of probabilities that the landlord in this case is a company as opposed to an individual.

As a result, the grounds to end the tenancy as cited in the Notice as delivered to the tenant are wrong and invalid as they relate to a situation where the landlord is an individual as opposed to a company.

It is possible for a corporate landlord to issue a Two Month Notice to End Tenancy for its own use of the property pursuant to section 49 (4) of the *Act*. To be successful the landlord must provide evidence to support a finding that the requirements of this section have been met.

Section 49 of the Act provides in part:

*In this section:*

**"close family member"** means, in relation to an individual, the individual's parent, spouse or child, or the parent or child of that individual's spouse;

**"family corporation"** means a corporation in which all the voting shares are owned by one individual, or one individual plus one or more of that individual's brother, sister or close family members;

**"landlord"** means

*(b) for the purposes of subsection (4), a family corporation that at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest;*

*(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.*

In this case there is no evidence at all before me that the present situation falls within section 49 (4). There is no evidence that the landlord is a family corporation as defined or that AA is a close family member of a person holding voting shares in the corporation.

Even if the landlord could show that the present situation falls within section 49 (4), as noted above, the signed statement of AA does not state that he is moving into the unit in

question but only he is "...willing to move in...". This lack of evidence is fatal to the landlord.

As a result, I find that the landlord has not met the burden of providing that the Notice is valid and the tenant is entitled to this Order cancelling the Two Month Notice to End Tenancy pursuant to section 49 (8) of the *Act*.

The tenant is entitled to the recovery of the filing fee from the landlord pursuant to section 72 of the *Act*. The sum of \$100.00 may be deducted from her rent payable for the month of August 2018.

The agent for the tenant confirmed that she was not seeking any Order pursuant to section 62 (3) of the *Act*, so that portion of her application is dismissed.

### Conclusion

The tenant is hereby provided with this Order cancelling the Two Month Notice to End Tenancy dated May 17, 2018, pursuant to section 49 (8) of the *Act*. Her tenancy shall continue until it is ended in accordance with the *Act*.

The tenant is entitled to the recovery of the filing fee from the landlord pursuant to section 72 of the *Act*, and may deduct the sum of \$100.00 off her August 2018 rent.

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, 2018

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Residential Tenancy Branch