



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HUNTLEY INVESTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, MNDCT, FFL

### Introduction

This teleconference hearing was scheduled in response to joint applications under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), for monetary compensation and for the recovery of the filing fee paid for each Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing and had a witness join the hearing to present testimony. Both Tenants were also present for the duration of the hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package for each application, a copy of the Tenants’ evidence, and a copy of both amendment forms through which each tenant applied for monetary compensation. The Tenants confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

### Issues to be Decided

Should the Two Month Notice served to each Tenant be cancelled?

If the Two Month Notices are upheld, is the Landlord entitled to an Order of Possession for each tenancy?

Are the Tenants entitled to monetary compensation?

Should the Tenants be awarded the recovery of the filing fee paid for each Application for Dispute Resolution?

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The Tenants each rent a unit within the residential property and filed to have their applications joined and heard together. Tenant A.A. testified that her tenancy began in 2002 and she pays monthly rent in the amount of \$550.00. She stated that a security deposit was paid at the outset of the tenancy but was unsure as to the amount.

Tenant D.B. testified that his tenancy began in 2003 and he pays monthly rent in the amount of \$365.00. He also stated that he paid a security deposit but was unsure as to the exact amount.

The Landlord did not have the information in front of him but agreed that the information provided by the Tenants was likely correct.

Both Tenants received a Two Month Notice as posted to their doors on March 29, 2019. The Two Month Notices were submitted into evidence and other than the Tenant's names and unit numbers, contain the same information. The notices state the following as the reason for ending the tenancy:

- 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

The effective end of tenancy date on each notice was stated as May 31, 2019.

The Landlord testified that he has two sons who have moved back home after college and they have plans to move into the residential property. The Landlord stated that one son finished school in December and had planned to move into the home in January but was unable to do so when a previous Two Month Notice was cancelled through a previous dispute resolution hearing. The Landlord stated that his other son finished school in April and will be moving into the residential property as soon as able to.

The Landlord further explained that the property is a single-family home that was divided into boarding rooms many years ago. He stated that each Tenant rents a room

or a few rooms that are separated from the other rental units in the home. The Landlord testified that his sons intend to reside in the home as a single-family home and not in the individual rental units.

The Landlord testified that the corporate landlord is a company that is owned entirely by his family.

Tenant A.A. testified that this is the third time since December 2018 that the Landlord has served them with a Two Month Notice. She noted that the previous notices were cancelled through dispute resolution proceedings. The decisions regarding the previous Two Month Notices were submitted as evidence and the file numbers are included on the front page of this decision.

She further testified that she believes the Landlord will keep serving Two Month Notices until the tenancies are ended. Tenant A.A. stated her belief that the Landlord's sons are not moving in and noted that the home is divided as a boarding house with separate rooms, not as a single-family home.

Tenant A.A. provided details on the residential property and stated that it was originally divided into 7 separate rental units, although 2 units on the top floor of the home were closed off after an issue was brought forth from the city regarding the fire escape. She stated that the remaining 3 units are empty and have been for approximately 3 to 4 years. She and Tenant D.B. are the only tenants remaining in the home.

Tenant A.A. also testified that the Landlord has a home in the same neighbourhood that is currently empty.

Tenant A.A. also referenced a similar situation in 2013 in the Landlord's other home that is currently empty. She stated that a tenant was evicted for a manager to use the unit, but this did not occur, and the home is now empty. The Tenants submitted a notarized statement from this previous tenant dated November 29, 2013.

Tenant D.B. testified as to his belief that the Landlord's sons will not be moving in and that the Landlord has ulterior motives for wanting to end the tenancy.

The Landlord stated that he had tried to rearrange tenants in the properties in the past to make room for an on-site manager. He noted that the other home in the same neighbourhood that was mentioned by the Tenants is used as an office space and is not suitable for his children to live in. The Landlord argued that he does not have to justify

why other properties may not be suitable for his sons, as he has a right to take the property out of the rental market and have his sons move into this home.

The Landlord submitted into evidence a 3-page written submission in which he notes that the home is owned 100% by the family corporation and outlines the history of what occurred with the previous Two Month Notices that were cancelled through previous dispute resolution proceedings.

The Landlord's son, J.W., attended the hearing as a witness. He stated that he moved back to the city in December 2018 after attending school. He testified that his father offered for him and his brother to move into this home and that he has toured the home and made plans to move in. The witness confirmed his plans to occupy the home as a single-family home and not as separate bedroom units. The witness further testified that the location is perfect for where his current place of employment is located. He noted that he made initial plans to move in after his father told him about the house, which were then confirmed after touring the house.

Both Tenants submitted amendment forms to add a request for monetary compensation to their applications. Tenant A.A. has claimed compensation in the amount of \$8,500.00 which she stated includes 6 months of rent reimbursement and compensation for the more than 80 hours spent on the applications and hearings since December 2018. She stated that this has involved an enormous amount of stress and personal time, as well as taking away from her self-employment.

In the amendment form, Tenant A.A. wrote that she is seeking compensation for the last 6 months of rent which is equivalent to \$3,300.00 as well as 80 hours of billable time which is equivalent to \$5,200.00.

Tenant D.B. amended his application to claim \$2,250.00 in compensation. He stated that he has spent many hours on the applications to dispute the notices, as well as experienced more than 6 months of stress. On the amendment form, the Tenant wrote that this is for reimbursement of 6 months of rent as well as 40 hours of time spent on the applications and hearing process.

In a decision dated March 22, 2019, both Tenants applied for compensation, which was dismissed without leave to reapply. Tenant A.A. had applied for \$3,300.00 which was the return of 6 months of rent and Tenant D.B. applied for \$2,190.00 which was also stated as the return of 6 months of rent. At the current hearing, Tenant A.A. stated that

through the previous application she applied for compensation for rent, but not compensation for 80 hours of work.

The Landlord testified that he has been equally frustrated with this process and that there is no evidence of time spent by the Tenants such as evidence of missed work. He questioned where the Tenants came up with the number of hours they are seeking compensation for.

### Analysis

Both Tenants were served Two Month Notices under Section 49(4) of the *Act* which states the following:

(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.

As stated in Section 49(8)(a) of the *Act*, a tenant has 15 days in which to dispute a notice served under Section 49(4). As the notices were posted on the Tenants' doors on March 29, 2019 and they both applied to dispute the notices on April 8, 2019, I find that they applied within the time allowable under the *Act*.

Therefore, the matter before me is whether the reasons for ending the tenancies on the Two Month Notices are valid. As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

As the Landlord served the notice as a family corporation under Section 49(4) of the *Act*, I find it relevant to refer to the definition of a family corporation provided in the *Act*.

Section 49(1) of the *Act* defines a family corporation as:

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;

While the Landlord testified that the corporation is owned solely by family and provided a written statement that the residential property is 100% owned by the corporation, he provided no documentary evidence of such. I note that to end a tenancy for landlord's use of property under the *Act*, a landlord must either be an individual, as stated in Section 49(3), or a family corporation as stated in Section 49(4). There is no provision in Section 49 of the *Act* for a corporate landlord to end the tenancy for landlord's use of property.

I accept that this is a corporate landlord and not an individual but due to insufficient evidence from the Landlord I am not satisfied that this is a family corporation. The Landlord submitted no documentary evidence that would establish that the corporation meets the definition of 'family corporation' as defined under the *Act*.

Therefore, I find that the Landlord has not met the burden of proof to establish that he had a right to serve a Two Month Notice under Section 49(4) of the *Act*. Although the Tenants claimed that the notices were not issued in good faith, I do not find it necessary to determine this as I am not satisfied that the notices issued under Section 49(4) of the *Act* are valid. Both Two Month Notices, dated March 29, 2019 are cancelled and of no force or effect. Both tenancies continue until ended in accordance with the *Act*.

Regarding the Tenants' applications for monetary compensation, I find that both Tenants had previously applied for monetary compensation through a decision dated - March 22, 2019. As stated in that decision, the Tenants' applications for compensation were dismissed without leave to reapply. As such, I find that the legal principle of *res judicata* applies, in which I cannot decide on a matter which has previously been decided upon.

However, it does seem that previously both Tenants applied for reimbursement of six months of rent only and not compensation for hours spent disputing the notices. Therefore, I will consider their applications for compensation for time spent, but not reimbursement of rent as I find that was already decided on and the Tenants were not granted leave to reapply. I also do not find sufficient evidence before me to determine that the 6 months of rent claimed differs from the previous applications for rent reimbursement.

In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Tenants provided testimony regarding the time spent and amount they make at their jobs which they lost due to preparing for and attending three hearings. However, neither Tenant submitted any documentary evidence of such and therefore I find that they did not meet the third point in the four-part test in proving the value of their loss.

I am also not satisfied that they proved that the Landlord has breached the *Act*, as, although multiple notices to end tenancy are likely stressful, the Tenants have not established that there was a breach of the *Act* by the Landlord and that they experienced a loss from this breach.

Therefore, the Tenants' applications for additional monetary compensation are dismissed, without leave to reapply.

As both Tenants were successful with their applications to cancel the Two Month Notices, pursuant to Section 72 of the *Act*, I award each Tenant the recovery of the filing fee paid for the application in the amount of \$100.00 each. The Tenants may each withhold \$100.00 from their next monthly rent payments as satisfaction of this fee.

### Conclusion

The Two Month Notices dated March 29, 2019 are cancelled and of no force or effect. The tenancies continue until ended in accordance with the *Act*.

The Tenants' claims for monetary compensation are dismissed, without leave to reapply.

Pursuant to Section 72 of the *Act*, each Tenant may deduct \$100.00 from their next monthly rent payment as recovery of the filing fee paid for each Application for Dispute Resolution.

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 27, 2019

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Residential Tenancy Branch