



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Westwind Apartments Ltd. and Five Mile Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

In this dispute, the tenant sought to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") under section 49 of the *Residential Tenancy Act* ("Act") and sought recovery of the filing fee under section 72 of the Act.

The tenant applied for dispute resolution on May 14, 2019 and a dispute resolution hearing was held on June 27, 2019. The landlords' agent and an employee attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend.

I reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

I note that section 55 of the Act requires that when a tenant applies 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's notice to end tenancy complies with the Act.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, are the landlords entitled to an order of possession?
3. Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

The landlords' agent (the "landlord" for brevity) testified that they served the Notice on the tenant on April 30, 2019 in person.

The Notice, a copy of which was submitted into evidence, indicated that the reason for the tenancy ending was because "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)."

The landlords are two corporations; that is, two corporate entities.

The landlord testified that the new building manager was to live in the rental unit.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **Is the tenant entitled to an order canceling the Notice?**

Where a tenant applies to dispute a notice to end a tenancy the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. In this dispute, the Notice was issued under subsection 49(3) of the Act, which states that

A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

"Landlord" is also defined in section 49(1) of the Act as being "an individual" for the purposes of section 49(3) of the Act, from which it may be inferred that a landlord cannot be a corporate entity under this section, as are the landlords in this dispute.

Given that a corporate landlord cannot occupy a rental unit it follows that a corporate landlord cannot end a tenancy under section 49(3), as was done in the Notice.

Thus, taking into consideration the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the onus of proving the ground on which the Notice was issued.

As such, I order that the Notice, served on April 30, 2019, is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

**Is the tenant entitled to recovery of the filing fee?**

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee.

In this case, while the Notice was cancelled, the tenant did not attend her own hearing and thus I am not inclined to grant an award for the cost of the filing fee.

Conclusion

I HEREBY ORDER THAT:

1. the Two Month Notice to End Tenancy for Landlord's Use of Property, which was issued and served on April 30, 2019, is cancelled and of no force or effect; and,
2. the tenancy will continue until it is ended in accordance with the Act.

This decision is final and binding, except where permitted by the Act, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 27, 2019

---

Residential Tenancy Branch