



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VIVAGRANT DEVELOPMENT (BAILLIE) CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNL, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on May 17, 2019 (the "Application"). The Tenants applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated May 03, 2019 (the "Notice"). The Tenants sought reimbursement for the filing fee.

The Tenant appeared at the hearing. An agent for the Landlord appeared at the hearing (the "Agent"). I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent confirmed the Landlord received the hearing package and evidence and raised no issues in this regard.

The Tenant testified that he did not receive the Landlord's evidence. The Agent testified that the evidence was served by email and registered mail. The Landlord had not submitted any evidence of service. The Agent provided Tracking Number 1 and Tracking Number 2 as proof of service. I looked these up on the Canada Post website. Tracking Number 1 is for a package sent May 03, 2019 and received May 06, 2019. Tracking Number 2 is for a package sent March 13, 2019 and received March 15, 2019. I told the Agent these could not be the tracking numbers for the Landlord's evidence as both packages were sent and received prior to the Application being filed. The Agent then said the Landlord did not send the evidence to the Tenants.

Given the Landlord did not serve their evidence on the Tenants, I found the Landlord failed to comply with rule 3.15 of the Rules of Procedure (the "Rules"). I heard the parties on whether the evidence should be admitted or excluded. The Agent asked if he could send the evidence now. I told the Agent that this needed to have been done prior to the hearing. The Agent said

the evidence should be admitted because he thought the Landlord sent the Notice. The Tenant submitted that the evidence should be excluded other than the following:

- Letter named "Tenant Notification" dated 2019-05-03;
- Document named "Assignment of Leases"; and
- Copy of the Notice.

I excluded the Landlord's evidence other than the three documents noted above. I found it would be prejudicial to the Tenants to admit evidence the Landlord did not serve on them. I admitted the above documents given the Tenant did not take issue with admission of them.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the admissible evidence pointed to during the hearing and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to reimbursement for the filing fee?

#### Background and Evidence

The Tenant testified that there was a written tenancy agreement between the Tenants and a previous owner of the rental unit. He advised that the original owner was an individual, that the rental unit was then purchased by a company that is not the Landlord and that the Landlord is currently the landlord in relation to the rental unit. The Agent said he has no idea about this written tenancy agreement.

The parties agreed on the following. The tenancy started November of 2011. The tenancy was a fixed term tenancy at the outset but is currently a month-to-month tenancy. Rent is \$2,200.00 due on the first day of each month.

The grounds for the Notice are that 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 Agent testified that he sent the Notice to the Tenants by registered mail on May 03, 2019. The Tenant acknowledged receiving the Notice May 06, 2019 by registered mail.

The Agent testified as follows in relation to the grounds for the Notice. The Landlord owns the rental unit. He is the brother of the director of the company Landlord who said he can live in the rental unit. His previous place is under construction so the Landlord served the Notice on the Tenants. This is the extent of the testimony initially given by the Agent.

I asked if the Agent had anything to say about the requirement that the Landlord be a family corporation as that term is defined in the *Residential Tenancy Act* (the "Act"). The Agent testified as follows. The company Landlord is owned by his father and his brother is the director. He also works for the company Landlord and has voting shares in the company. He is a close family member of the Landlord. All decisions are made by his brother, the director. His father and brother own the company Landlord. He has signing authority when his brother is away so he has a voting share.

The Tenant disputed that the company Landlord is a family corporation. The Tenant relied on an Affidavit submitted. He said this shows the Landlord evicted tenants at another property and that the individuals now living there claim to be shareholders in the company Landlord and are not family members of the Agent. The Tenant pointed to evidence submitted from the website of the company Landlord which he says shows the Landlord is not a family corporation because it is the North American office of a company based in another country. The Tenant pointed out that the Landlord failed to provide any evidence relating to shareholder information for the company Landlord.

The Tenant also disputed that the company Landlord meets the definition of "landlord" as set out in section 49 of the *Act*. He pointed to a Title Search submitted showing the company Landlord is not on title for the rental unit. He submitted that the company Landlord has no ownership interest in the rental unit. He testified that there is no evidence the other companies listed on the Title Search are the landlords in relation to the rental unit. The Tenant submitted that the Landlord has failed to show a connection between the company who owns the rental unit, as shown on the Title Search, and themselves.

The Tenant submitted that it is concerning that the documentation shows the Landlord issued tenants in another property a Two Month Notice based on the same grounds and then moved a shareholder, who is not a family member, into the property.

The Tenant disputed that the Agent intends to move into the rental unit. The Tenant submitted that it does not make sense that the Agent would choose to live in the rental unit, which is not in great condition, when the Agent and his family develop properties and have multiple other units and options. He said he does not believe the Agent has ever looked at the rental unit.

In reply, the Agent testified that the person living at the other property is a shareholder and financial partner of the company Landlord. He acknowledged that this person is not a family member and agreed the previous tenants at that property were issued a Two Month Notice. The Agent acknowledged that the company Landlord has shareholders that are not family

members. The Agent said the company Landlord is not on the Title Search because the numbered company is.

### Analysis

The Notice was issued under section 49(4) of the *Act* which states:

(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.

Both "landlord" and "family corporation" are defined in section 49(1) of the *Act* as follows:

"family corporation" means 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;

"landlord" means...

(b) for the purposes of subsection (4), a family corporation that

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest;

The Tenants had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*.

I accept the testimony of the Agent that he sent the Notice to the Tenants by registered mail on May 03, 2019. I did not understand the Tenant to dispute this. Further, I understand that Tracking Number 1 provided in relation to service of evidence actually relates to service of the Notice. The Canada Post website information for Tracking Number 1 supports that it was sent May 03, 2019. I accept that the Tenant received the Notice May 06, 2019. I did not understand the Agent to dispute this and the Canada Post website information supports this.

The Tenants filed the Application May 17, 2019, within 15 days of receiving the Notice May 06, 2019.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The Agent testified that the Landlord owns the rental unit. The Tenant disputed this. The Tenant submitted a Title Search dated March 19, 2019. This is dated after the Assignment of Leases submitted by the parties. I cannot see the Landlord's name on the Title Search. The Title Search shows that a different company owns the rental unit. The Agent had not looked at the Title Search. He did not point to where on this document it shows the Landlord owns the rental unit. He did not explain why the Title Search shows that a different company owns the rental unit. He said the numbered company is on the Title Search. There is no admissible evidence before me about a link between a numbered company and the Landlord. If the Agent is referring to the incorporation number for the Landlord as noted on the BC Company Summary submitted by the Tenants, this is not on the Title Search either.

It is the Landlord who has the onus to prove the Notice. Part of this is proving the Landlord meets the definition of "landlord" in section 49 of the *Act*. The Landlord has failed to prove they own the rental unit or meet the definition of "landlord" in section 49 of the *Act*.

Further, the Tenant disputed that the Landlord is a "family corporation" as that term is defined in section 49 of the *Act*. There is no admissible evidence before me showing that the Landlord meets the definition of a "family corporation" in section 49 of the *Act*. I am not satisfied based on the testimony of the Agent alone that the Landlord is a "family corporation" given the Tenant disputed this. Further, I did not find the Agent's testimony on this issue compelling.

In the circumstances, I am not satisfied the Landlord meets the definition of "landlord" or "family corporation" as defined in section 49 of the *Act*. The Landlord therefore has failed to prove the Notice as meeting these definitions is a requirement for ending a tenancy pursuant to section 49(4) of the *Act*. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants were successful, I award them reimbursement for the \$100.00 filing fee. The Tenants can deduct \$100.00 from one future rent payment pursuant to section 72(2)(a) of the *Act*.

### Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*. The Tenants can deduct \$100.00 from one future rent payment as reimbursement 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 *Act*.

Dated: July 05, 2019

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Residential Tenancy Branch