



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Parni Enterprises Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNE

### Introduction

This hearing dealt with a tenant's application to cancel a *One Month Notice to End Tenancy for End of Employment* ("1 Month Notice").

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the landlord's agent received the tenant's proceeding package and evidence. I also confirmed that the landlord had not provided any evidence or materials prior to the hearing and the landlord's agents intended to present their evidence and arguments orally during the hearing.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process.

### Issue(s) to be Decided

Should the 1 Month Notice be upheld or cancelled?

### Background and Evidence

The current landlord purchased the subject residential property, an apartment building, in September 2020 and inherited the subject tenancy.

The current landlord was not provided a copy of a written tenancy agreement for the subject tenancy.

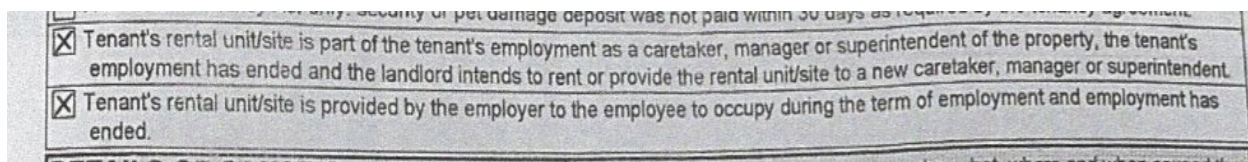
The tenant testified that he began a tenancy in a different unit at the subject property in November 2013 but moved to his current unit ("the rental unit") in 2015. The tenant recalls that there was a written tenancy agreement for the previous unit but he cannot find a copy of it. The tenant recalls that the former landlord did not prepare a new tenancy agreement when he moved to subject rental unit.

The tenant testified that his rent started at \$750.00 per month and he paid a security deposit to f\$375.00. The landlord's agents confirmed they received a security deposit of \$375.00 from the former landlord for the subject tenancy.

Both parties provided consistent testimony that the tenant's current rent obligation is \$812.00 payable on the first day of every month.

By way of this application, the tenant seeks cancellation of a *One Month Notice to End Tenancy for End of Employment* ("1 Month Notice") that was served upon him on December 12, 2020. The 1 Month Notice is on an older form that was not the approved form when it was issued; however, I proceeded to hear the merits since the reasons provided on the 1 Month Notice are consistent with reasons for ending a tenancy under section 48(1) and (2) of the Act and use of the form, in this case, is not substantively different than had the current approved form been used.

The landlord indicated the reasons for ending the tenancy as follows:



In the details of cause section, the landlord wrote that the tenant was the caretaker/superintendent for the property until September 2020.

The tenant filed to dispute the 1 Month Notice within the time limit for doing so.

### **Landlord's position**

The landlord's agents submitted that the tenant had been performing duties of a caretaker/superintendent/manager at the property under an agreement with the former landlord and the former landlord had paid the tenant for his services for the month of September 2020. However, upon purchasing the property, the landlord's agents had a discussion concerning the tenant's continuation as being the caretaker but they decided

to end the caretaker agreement with the tenant on September 24 or 25, 2020. The landlord's agents were of the position they had cause to end the tenancy.

The landlord's agents submitted that the tenant's occupation of the rental unit and his tenancy were tied to his role as caretaker at the property. The landlord's agents submitted that they determined this during oral conversations with the former landlord and the tenant himself. By way of these discussions, the landlord understood that the tenant was provided payment of \$1000.00 per month for his caretaking duties, in addition to discounted rent; and, the tenant's rental unit is for the building caretaker.

The landlord's agents acknowledged they did not receive a copy of a written employment agreement or contract and they did not know when the caretaking role started for the tenant and their knowledge was derived from oral discussions with the tenant and the former landlord.

### **Tenant's position**

The tenant provided a written submission concerning his tenancy and role as caretaker in his evidence package.

During the hearing, the tenant acknowledged that his role as caretaker terminated shortly after the property was acquired by the current landlord but he was of the position it was terminated on or about October 8, 2020. The tenant stated that on October 8, 2020 the landlord's agent fired him and he quit his position as caretaker simultaneously.

Whatever the reason for termination of his caretaker position, the tenant submitted that his position as caretaker was never tied to his tenancy or occupation of the subject rental unit and that ending the caretaking position does not end his tenancy for the rental unit.

The tenant submitted that his tenancy started years before his caretaking role began in July 2019. With respect to the caretaking position, the tenant stated that the former owner was getting elderly and he started performing certain tasks for the former owner (such as collecting rents, cutting the grass, cleaning and basic building maintenance) in exchange for payment of \$1000.00, in cash, every month and on occasion he was paid more money if he undertook extra duties such as when a unit was vacated and needed repairs or painting. The tenant stated there was no written employment agreement or other contract that provided for the caretaking role.

The tenant denied that he received a discounted rent for being the caretaker. Rather, he pointed out that his rent was set years before he became the caretaker and that his rent had even increased after he became the caretaker. The tenant was at all times still responsible for paying his rent in the full amount while he was caretaker. The tenant provided copies of rent receipts showing his monthly rent payments for the subject rental unit were \$750.00 in 2016 and 2017; \$777.00 in 2018 and 2019; and, \$812.00 in late 2019 onwards.

The tenant refuted that his unit is a unit designated as the caretaker's unit when his tenancy began or when he commenced duties as the caretaker.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

I heard unopposed evidence that the tenant was paid \$1000.00, in cash, by the former landlord for caretaking duties performed by the tenant at the subject residential property for the months of July 2019 through September 2020. While the absence of a pay statement, T4, or record of employment are inconsistent with employment requirements by law, I find the landlord's or former landlord's failure to comply with employment standards or the *Income Tax Act* are beyond the scope of this dispute and do not preclude me from further considering the parties respective positions concerning the fate of this tenancy. For purposes of this tenancy dispute I proceed on the basis the tenant had an employment agreement to provide caretaking/superintendent duties at the property.

Section 48 of the Act provides for ending a tenancy where there is an end of employment. In this case, the reasons indicated on the 1 Month Notice served upon the tenant are provided under section 48(1) and (2) of the Act, which I have reproduced below:

**48** (1) A landlord may end the tenancy of a person employed as a caretaker, manager, or superintendent of the residential property of which the rental unit is a part by giving notice to end the tenancy if

(a) the rental unit was rented or provided to the tenant for the term of his or her employment,

(b) the tenant's employment as a caretaker, manager or superintendent is ended, and

(c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager, or superintendent.

(2) An employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving notice to end the tenancy if the employment is ended.

[My emphasis underlined]

I note that in 48(1) and (2) there is a similar requirement for ending the tenancy: that the rental unit was provided to the tenant to occupy during or for the term of his or her employment, as emphasized by me in the underlined areas above.

I was provided opposing submissions that the rental unit was provided to the tenant as part of his employment as the caretaker by the former landlord. The landlord's agents pointed to oral conversations with the tenant and the former owner as the basis for its position that the rental unit was provided to the tenant as part of his employment. However, the tenant refuted the landlord's agent's position to be accurate and the landlord did not call the former owner to testify. As such, I find the landlord is largely relying upon hearsay evidence that has not been sufficiently supported by other corroborating evidence.

In contrast, I find the tenant's position to be likely. According to all parties, the tenant and the former owner entered into the tenancy and an employment agreement, both of which were oral. As such, I am of the view the tenant is in a position not provide firsthand testimony as to what was agreed upon. I accept the tenant's unrefuted position that his tenancy for the subject rental started in 2015 and his role as caretaker commenced in July 2019. As such, I find it unlikely that his tenancy for the subject rental unit is dependant or was provided to the tenant for the term of employment since the tenancy pre-dated the employment. Also of consideration is that the tenant's rent was set at \$750.00 per month well before the employment commenced and his rent

actually increased after his caretaking role commenced which supports the tenant's position that he was not provided a discounted rent because of his employment.

In light of the above, I find the tenant's position that he has a tenancy agreement for the subject rental unit this is and was completely separate from an employment contract than the landlord's position and the landlord has failed to satisfy me that the rental unit was only to be provided to the tenant as part of his employment or limited to the duration of his employment as caretaker. Therefore, I grant the tenant's application to cancel the 1 Month Notice and the tenancy continues at this time.

With this decision, I award the tenant recovery of the \$100.00 filing fee he paid for this Application for Dispute Resolution. The tenant is authorized to deduct \$100.00 from a subsequent month's rent payment to satisfy this award and in doing so the landlord must consider the rent paid in full.

### Conclusion

The 1 Month Notice dated December 12, 2020 is cancelled and the tenancy continues at this time.

The tenant is authorized to deduct \$100.00 from a subsequent month's rent payment to recovery the filing fee paid for this Application for Dispute Resolution and in doing so the landlord must consider the rent paid in full.

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: March 24, 2021

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Residential Tenancy Branch