



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter Properties A Division of UBC PT  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNE, FFT**

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- cancellation of the landlord’s One Month Notice to End Tenancy for End of Employment (“One Month Notice”) pursuant to section 48
- reimbursement of the filing fee pursuant to section 72

Both parties attended the hearing with the landlord represented by agents ES and VK. The tenant, TG appeared along with counsel, MG. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated August 26, 2022 with an effective date of September 30, 2022. Pursuant to section 88 of the Act the tenant is found to have been served with the notice in accordance with the Act.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

### **Issue(s) to be Decided**

1. Is the One Month Notice valid and enforceable against the tenant?
2. Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy commenced July 1, 2021, on a month-to-month basis. Rent was \$1,231.25 per month and no security or pet deposits were taken. The tenant still occupies the residence.

The agents for the landlord stated that the tenant was provided the rental unit as part of his employment with the landlord. The rent listed in the tenancy agreement was a substantial reduction from the market value rent for the unit. Current market value rent for the rental unit is \$2,275.00. The tenant's employment ended June 27, 2022. Although the rental unit was provided as part of the tenant's employment, the landlord was prepared to have the tenant remain in the unit, however he had to submit a new application and pay the current market value of the rental unit. The landlord's position is that the rent paid by the tenant was subsidized as a benefit of employment. Once the employment ended the tenant would no longer be subsidized by the landlord and the rent would be increased to market value. The landlord does not currently require the unit for another employee and attempted to communicate with the tenant on several occasions, asking him to reapply for the rental unit. The employment contract produced in evidence references the provision of a rental unit to the tenant with the rent subsidized by the landlord. The landlord's agents confirmed that the employment contract was not incorporated by reference into the tenancy agreement.

Counsel for the tenant stated that the tenancy agreement produced in evidence does not refer to the employment contract or that the tenancy is provided as a result of the tenant's employment with the landlord, and therefore the tenancy could not be considered to be part of employment. Counsel also submitted that the tenant's employment was as a caretaker in the building where the rental unit is located, therefore the landlord had to satisfy the test in section 48(1) of the Act in order to terminate the tenancy. The landlord does not require the rental unit for another employee; therefore section 48(1)(c) is not satisfied, and the landlord cannot lawfully terminate the tenancy under section 48 of the Act.

### Analysis

RTB Rules of Procedure 6.6 states, "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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenant.

The landlord's position is that the tenant can remain in the unit if he reapplies for the unit and pays the market rate for rent. Because the tenant has not reapplied, they wish to end the tenancy pursuant to section 48 of the Act. Section 48(1) states:

- 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.

The undisputed evidence is that the tenant was a caretaker of the building where he occupied the rental unit. I find therefore that section 48(1) of the Act applies, and the landlord has the onus of establishing that all three conditions listed in section 48(1) of the Act are satisfied.

The parties agree that the landlord does not intend to rent or provide the rental unit to a new caretaker, manager, or superintendent. The evidence of the landlord is that the tenant can remain in the rental unit on the condition that he pays market rent. Therefore, the landlord has not satisfied the requirement that the unit is needed for another employee. The tenancy can not be terminated under section 48 of the Act.

The tenant's application to cancel the One Month Notice is granted. As the tenant is successful in his application, he is entitled to recover the filing fee for the application.

### Conclusion

The One Month Notice is cancelled. The tenancy shall continue until it is ended in accordance with the Act. The tenant is entitled to recover the filing fee and is permitted to deduct \$100.00 from one month's future rent on a one-time basis.

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: November 18, 2022

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Residential Tenancy Branch