



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## DECISION

Dispute Codes: DRI, OLC, & FF

### Introduction:

This hearing dealt with an application by the tenants disputing an illegal rent increase, requesting an Order that the landlord comply with the *Act* and regulations and requesting that an agreement to end the tenancy be found to have no force or effect. Both parties appeared for the hearing and had the opportunity to be heard and respond to the evidence of the other party.

### Issues to be Determined:

The issues before me are whether the landlord has complied with the *Act* and regulations in their attempts to change the tenancy agreement and whether the agreement to end the tenancy has any force or effect.

### Background and Evidence:

This tenancy began on August 1, 2005 as a fixed term lease ending on July 31, 2006. At the conclusion of the fixed term lease this tenancy reverted to a month to month tenancy. The monthly rent began at \$550.00 and was increased during the tenancy to \$572.00. The tenants paid a security deposit of \$275.00 on September 1, 2005.

This dispute began when the landlord came to the tenants on November 3 or 4th, 2008 requesting that they accept a new tenancy agreement which was a fixed term lease beginning on December 1, 2008 ending on May 31, 2009 for the monthly rent of \$750.00. The landlord also gave the tenants a typed letter dated November 1, 2008 stating the following:

*Notice to End Month to Month Agreement*

*This letter pertaining to your month to month lease with us [name of landlord] at Lot D-14 Re: [tenants' names] Date to end and vacant possession for November 30, 2008.*

*Enclosed is a new 6 month Agreement. Please sign and return to me @ [address of landlord]*

The tenants did not want to agree to the increase of rent from \$572.00 to \$750.00 and declined to sign the new tenancy agreement. After this the landlord and tenants made arrangements to meet on November 13, 2008 to discuss.

The tenants submitted that they determined that the landlord's attempt to increase the rent was not legal and they would not agree to it. However, they submitted that the landlord was intent on either evicting them if they did not agree to the new terms. The tenants submitted that they believed that the landlord had the right to evict them effective November 30, 2008. The tenants argued with the landlord that they were to be provided with sufficient notice in order for the landlord to end the tenancy. The tenants mistakenly believed that the landlord could end the tenancy with three months notice. On this basis the tenants agreed to sign an agreement ending the tenancy effective February 28, 2009 which would not have any rent increase attached to it. This document was signed on November 13, 2008.

The representative of the landlord who appeared for this hearing was not directly involved with the conversation between the landlord and the tenants on November 13, 2008, but was a witness. She did not confirm or deny any of the statements of the tenants and clearly had the impression that the landlord could change the terms of the tenancy agreement or end the tenancy on the basis of the typed letter of November 1, 2008.

The landlord indicated that they are seeking a new tenancy agreement due to possible developments in the park which will impact the tenancy. The landlord submitted that the tenants agreed to end the tenancy effective February 29, 2009 and that it was agreed there would be no rent increase for this period.

#### Analysis:

Both landlords and tenants have rights and obligations under the *Act* and regulations and can be found liable for damages if they fail to comply with *Act*. I find that the landlord was clearly trying to avoid their obligations under the *Act* in their attempts to change the terms of the tenancy agreement, raise the rent to \$750.00 and in attempting to enforce an illegal notice to end tenancy.

I accept the evidence of the tenants that they felt compelled and forced into signing the agreement to end the tenancy on the basis that the landlord could end the tenancy effective November 30, 2008. I accept that the landlord used this dynamic to bolster his position of power in an attempt to have the tenants agree to unconscionable material terms. I accept that the landlord was attempting to avoid their obligations under the *Act* and that they benefit unfairly by these actions.

Section 3 of the *Residential Tenancy Regulations* defines unconscionable as follows:

*"For the purposes of section 6 (3) (b) of the Act [unenforceable term], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party."*

Section 8 of the Residential Tenancy Policy Guidelines provides further context to the principal of "unconscionable" as follows:

*Terms which are unconscionable are not enforceable . Whether a term is unconscionable depends upon a variety of factors. To be unconscionable the term must be oppressive or grossly unfair. A test for determining unconscionability is whether the agreement is so one-sided as to oppress or unfairly surprise the other party. Such terms may be a clause limiting damages or granting a procedural advantage.*

*Another example of a term which has been found to be unconscionable is where one party took advantage of the ignorance, need or distress of a weaker party which left that party in the power of the stronger.*

I find that the landlord attempted to avoid the *Act* by having the tenants enter into a new tenancy agreement which would allow for a significant increase of the rent and would allow the landlord to end the tenancy in the future outside of the grounds allowed under the *Act* based on their potential plans to change the nature of the manufactured home park. I find that the landlord took advantage of the tenants' fear that they could end the tenancy effective November 30, 2008 based on the typed notice to end tenancy. I note that the typed notice to end tenancy has no force or effect because it does not state any cause under the *Act* to end the tenancy, is not on the approved form and failed to inform the tenants' right to dispute the notice. I find that the landlord used both the tenants' ignorance and their position of power to oppress the tenants' rights. I find that these actions are grossly unfair and oppressive and would grant the landlord an unfair benefit by avoiding his legal obligations under the *Act*.

I grant the tenants' application and Order that the landlord comply with the *Act* and regulations. Failure to do so could result in liability pursuant to section 7 of the *Act*. I further find that the agreement to end the tenancy effective February 29, 2009 is without force or effect, documented in writing on November 13, 2008.

This tenancy will remain as a month to month tenancy at the monthly rent of \$572.00. This tenancy may only end pursuant to grounds allowable under the *Act*.

#### Conclusion:

I grant the tenant's application and Order that the landlord comply with the *Act* and regulations. I confirm the tenants' month to month tenancy and have found the agreement to end tenancy effective February 29, 2009, signed on November 13, 2008, is not enforceable. This tenancy will continue with full force and effect.

Having accepted the tenants' application I Order that the landlord reimburses the tenants the \$50.00 filing fee paid for this application pursuant to section 72 of the *Act*. The tenants may deduct \$50.00 from their next months rent to recover this sum.

Dated December 03, 2008.

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Dispute Resolution Officer