



Dispute Resolution Services

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

Decision

Dispute Codes: CNC OLC O FF

Introduction

This hearing dealt with two sets of applications by ten tenants. In the first set of applications, all ten tenants applied for an order that the landlord comply with the *Residential Tenancy Act* (“the Act”), regulation or tenancy agreement. In the second set of applications, seven of the ten tenants applied to cancel notices to end tenancy for cause, as well as reiterating their original application for an order that the landlord comply.

The hearing was conducted in person on January 16, 2009. The ten tenants all appeared and participated in the hearing. The landlord was represented by counsel, the general manager of the corporate landlord acting as agent (“AW”) and the building manager (“BB”) as a witness. At the conclusion of the evidentiary portion of the hearing, the tenants and the landlord provided written submissions. On January 23, 2009 the parties submitted their written replies, and on January 30, 2009 the landlord submitted a further response to the tenants’ reply.

In reaching my decision I have not admitted or considered any new evidence that was contained in the written submissions but which ought to have been presented in the evidentiary portion of the hearing.

Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, regulation or tenancy agreement?

Are the notices to end tenancy valid?

Background and Evidence

The tenants in this matter all reside in an apartment building that the current landlord took possession of in September 2007. All of the applicants' tenancies commenced prior to this change in ownership, and all of the tenants had one or more cats in their rental unit, despite a clause in their tenancy agreements that forbade pets without written permission ("the pet clause").

In November and December 2008, the landlord issued to each of the applicants a warning letter which advised that it had come to the landlord's attention that the tenant kept a pet in their suite, contrary to their tenancy agreement, and the landlord would serve a "Notice of Termination" if the tenant did not remove their pet within 14 days of receiving the letter. All 10 applicants applied for dispute resolution for an order that the landlord comply with the Act, regulation or tenancy agreement.

On January 6, 2009 the landlord served tenants 1 through 7 with notices to end tenancy for cause. Each notice cited the cause for ending the tenancy as "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." Tenants 8 and 9 had informed the landlord of their intention to vacate and they therefore were not served with notices to end tenancy. Tenant 10 informed the landlord that she had received written permission to have a pet and the landlord did not serve tenant 10 with a notice to end tenancy. Tenants 1 through 7 made a further application for dispute resolution to cancel the notices to end tenancy. Tenants 8, 9 and 10 appeared in the hearing and stated that they wished to proceed with their applications for an order that the landlord comply, and to give evidence in support of tenants 1 through 7.

The relevant evidence of the tenants was as follows.

Tenant 1 ("T1") has been a tenant in the building for seven years, in a total of three different suites. Before commencing the first of his tenancies, T1 saw the building listed in a local pet food store as a pet friendly building, so he went to the building, rang the manager's intercom and asked if the building allowed pets. The manager at that time,

EB, said that pets were allowed. T1 viewed the potential suite, where the current tenant had two cats and was moving into another apartment in the same building. T1 asked EB about the clause in the tenancy agreement stating that permission for pets was to be in writing, and EB assured T1 that verbal permission was fine. T1 moved into the first of the suites with his two cats.

On one occasion T1 attended at EB's suite and EB had a cat in her suite. During his first tenancy, one of T1's cats crawled inside a wall in the suite that was being rebuilt, and was accidentally tiled in. T1 had to smash the tiles to free the cat, and then T1 advised EB of the incident. In 2003, EB knocked on T1's door and asked if he could adopt a stray cat that Tenant 8 ("T8") had found. T1 could not adopt the stray at the time, but his understanding is that T8 adopted the stray cat.

Since the takeover of the building by the new landlord in September 2007, agents of the landlord attended at T1's suite at least 4 times: during suite inspections on November 8, 2007; to install automatic door closers on or about August 14-15, 2008; when testing smoke detectors on October 16, 2008; and during suite inspections on November 18, 2008. T1 has very prominent "kitty condos" in his living room and dining room and a scratching post and large litter box in the bedroom, which he submitted are very obvious and could not possibly be missed by anyone attending the suite. T1 submitted as evidence photographs of the two large kitty condos, the scratching post and the litter box.

As further supporting evidence, T1 submitted affidavits from nine other current and former tenants of the building, all of whom stated that the building has been a "pet friendly building." One of these tenants has lived in the building for 40 years, another for 36 years, one for 20 years, and one for 17 years. Two of these tenants included in their statements reference to a previous building manager ("GB"), who had two dogs in her suite.

T1 did not seek verbal permission for pets before entering into his second and third tenancies in the building. At the time of the hearing, T1 had three cats.

Tenant 2 ("T2") moved into the building on April 4, 2004. At that time she did not have a cat, but she noticed that nearly everyone had a cat. On August 30, 2006, T2 acquired her cat. She didn't think to ask for permission to have a pet. One time afterwards the building manager, EB, came to T2's suite and told T2 how sweet her cat was.

On November 8, 2007, the landlord's agent AW and the building manager BB attended at T2's suite to conduct an inspection. T2 was present at her suite on that date, and she witnessed that both AW and BB saw her cat. T2 also had a scratching post prominently located next to her living room balcony which "cannot be missed." T2 submitted as supporting evidence a photograph of the scratching post, which has multiple levels and appears to stand approximately four to five feet high.

To T2's knowledge, an agent of the landlord attended at her suite on August 14 or 15, 2008 in order to install a door closer. On October 16, 2008, BB's wife, acting as agent for the landlord, attended at T2's suite to conduct a fire safety inspection. T2 was home, and her cat met BB's wife at the door. At some point between October 16, 2008 and November 18, 2008, BB brought his young daughter to visit T2's cat. On November 18, 2008 the landlord conducted another inspection of T2's suite.

T2 did not ask for permission to have a cat or check her tenancy agreement. When EB acknowledged T2's cat, T2 took that as verbal permission.

Tenant 3 ("T3") moved into the building in November 2000. At that time she did not have a cat. In May 2003 T3 moved into another suite in the building, and entered into a new rental agreement for that suite. T3 acquired a cat in June 2004. T3 did not receive written approval for a pet, but three of the six apartments on T3's floor had cats, and the building manager EB was aware that T3 had a cat. EB attended T3's unit "on many occasions," including the yearly smoke detector checks and accompanying a repairman to check T3's thermostat control. T3 estimated that an agent of the previous landlord had been in her suite three times a year. T3 keeps her cat's litter box in the entrance hallway, "so you cannot miss that a cat lives in the apartment." T3 submitted as

supporting evidence a photograph of the litter box next to her front door.

On November 8, 2007, T3 was present when AW and BB conducted an inspection of her suite. Both BB and AW said “hi kitty” directly to T3’s cat. BB and AW were in the apartment for “a length of time” to take pictures of the view from the kitchen and living room.

On December 26, 2007, BB attended at T3’s apartment to temporarily replace the refrigerator. T3 had to move the litter box away from the front door in order for BB to move the fridges in and out. On two later occasions BB brought a repairman back to repair the fridge, and both BB and the repairman acknowledged T3’s cat because the cat was curious and hanging around them while they were in the apartment.

On October 16, 2008 BB’s wife attended at T3’s suite with the fire alarm inspector. BB’s wife and the inspector were both aware of T3’s cat, and the inspector warned T3 that the alarm test “may freak out the cat.”

On November 18, 2008, T3 was present when BB and AW attended her suite to conduct an inspection. T3’s cat was present and “[BB] and [AW] could not have missed the cat.”

In November or December 2008 BB attended at T3’s suite to replace the temporary fridge with a new one, and again the litter box by the front door had to be moved for this to occur.

On December 11, 2008 T3 was in T2’s suite with T1, T2 and another tenant when BB came to the suite. T3 said to BB “you knew I had a cat,” and BB acknowledged he did know. T3 also said “you [BB] and [AW] both saw my cat when you were in my apartment for the first inspection in November 2007” and BB agreed.

Tenant 4 (“T4”) moved into her suite in April 2003. She did not have a pet at that time, but she believed that EB had a cat, as did many other tenants in the building. In

October 2003 T4 spoke with EB about getting a cat, and EB's response was "you can have cats as long as they are de-clawed and have had shots." T4 adopted a cat in November 2003 and had the cat in her suite until May 2004, when she was going to leave the country for an indefinite time and Tenant 10 ("T10") adopted T4's cat. T4 maintained her tenancy in the same suite and returned in September 2004. T4 adopted a new cat in March 2006, and EB was aware of that fact.

Since the takeover of the building by the new landlord in September 2007, agents of the landlord attended at T4's suite for at least two suite inspections, three repair visits and two door lock visits. T4's cat is very timid and would not be visible when people enter T4's suite, but the cat's litter box and toys are in plain view. T4 submitted as supporting evidence photographs of the litter box in the bathroom and several cat toys on the living room floor.

Tenant 5 ("T5") moved into her suite in October 2006. T5's daughter also moved into another suite in the same building in 2006. When T5 first viewed the suite, before signing the tenancy agreement, she informed the building manager EB that she had a cat, and EB said that was not a problem. T5 has had her cat since 2003, and she would not have moved into the building if she had to give her cat away. T5's daughter provided evidence in a written statement that EB told T5 that they don't believe in separating animals from their families.

On November 7, 2007 T5 was present when AW and BB conducted an inspection of her suite. Both BB and AW saw T5's cat. BB said "what a nice cat! What is he called?" BB has since been in T5's suite many times to conduct maintenance. Each time BB saw T5's cat and again asked T5 the cat's name. T5's cat is very visible and very friendly. T5 has "cat stuff everywhere" in her suite.

Tenant 6 ("T6") moved into her suite in September 1992. When T6 signed her tenancy agreement, she saw the pet clause and asked the resident manager at the time, GB, about it. GB assured T6 that verbal permission would suffice, since the landlord was allowing GB to keep two Doberman pinschers in her apartment. GB also disclosed that

a large percentage of the tenants in the building had cats. T6 moved into her suite with two cats. The next resident manager, EB, also had a cat. T6 has had one or two cats for almost the entire duration of her tenancy, and currently has one cat.

On September 21, 2007 all of the tenants were notified that the new landlord would be taking over the building. T6 received a welcome package from the new landlord and there was no mention of a pet policy in that package. T6 submitted a copy of the welcome package in her evidence. The topics addressed in the welcome package are as follows: business hours; emergency numbers; parking; entry to building; laundry room; pool & sauna; storage; noise ("Loud noise is prohibited in all common areas..."); smoking ("No smoking is allowed in any of the common areas... Please refrain from throwing cigarette butts or emptying ashtrays over the balcony railings, as this can cause a fire"); cooking ("Use hood fans above the stove at all times when cooking spicy or strong food."); balconies; and notice to vacate.

On November 8, 2007 the landlord attended at T6's suite to conduct an initial suite inspection. The tenant was not present during the inspection but it would have been clear that she had a cat because of the cat accessories in her suite. After this inspection, no one from the landlord indicated that there was a problem with T6 owning a cat. After the initial inspection the landlord entered the suite on at least two more times, once to install a door closer and once to conduct a fire and safety inspection. Another suite inspection was conducted on November 18, 2008.

T6 was not aware of a "no pets" sign on the door of the building.

Tenant 7 ("T7") moved into his suite in March 2007. When T7 saw the ad for the suite, there was no indication on the ad that no pets were allowed. T7 met with EB to inquire about the suite and he told EB that he had two cats and that his cats' claws were maintained. EB told T7 that she, EB, had a cat. T7 saw that there were plenty of other tenants in the building with cats, and he saw EB's cat. EB gave T7 verbal permission to have his cats, and he has lived with those two cats in his suite since he moved in.

Since the takeover of the building by the new landlord in September 2007, agents of the landlord attended at T7's suite, to his knowledge, on four occasions: on November 8, 2007 to conduct a suite inspection; on August 14 or 15, 2008 to install a door closer; on October 16, 2008 for a fire and safety inspection; and on November 18, 2008 for another suite inspection. T7 was not present in his suite on any of those occasions, but his two cats were there, as well as a litter box and cat furniture.

Tenant 8 has lived in the building two different times, from 2000 to 2004 and from 2006 to present. Before the first time she moved in, T8 asked the building manager, EB, if she could have cats, and EB said yes. T8 moved into the first suite in 2000 with two cats. During the first tenancy, T8 found a stray cat in the street and brought it directly to EB and asked if she could keep it. EB "smiled and said yes." EB asked T1 if he could keep the stray but as he could not, T8 ended up keeping the stray and had three cats until the end of her first tenancy.

In 2006 T8 returned from travelling and moved back into the building. Before signing her second tenancy agreement T8 told EB that she still had the three cats, and EB said that was fine. T8 moved into the new suite with three cats. one of the cats passed away, and the other two continue to reside with her.

On November 8, 2007, AW and BB conducted an inspection of T8's suite. T8 was present for the inspection, and both AW and BB saw her cats.

On June 9, 2008, T8 sent an email to AW in advance of anticipated repairs. In the email, a copy of which she provided as evidence, T8 let AW know that she had two cats and they would run out in the hall if the door was left open. In her evidence T8 included a copy of AW's reply email of June 10, 2008, where he agreed to have the repairs done on Friday.

Agents of the landlord attended at T8's suite on several more occasions. On August 6, 2008 T8 was present in her suite with her two cats while BB attended to repair T8's closet door. On August 14 or 15, 2008 an agent of the landlord attended at T8's suite to

install a door closer. On October 16, 2008 BB's wife entered T8's suite for a fire safety inspection. BB's wife stood in the door entrance and had a clear view of the living room, where T8 and her two cats stayed during the inspection. On November 18, 2008 the landlord conducted a suite inspection. On November 21, 2008 BB and a fridge repair person entered T8's suite. T8 witnessed BB walk through her living room where her cats and all of their toys and scratching posts were located.

T8 decided for personal reasons to move out of the suite, and she was not served with a notice to end tenancy.

Tenant 9 ("T9") has lived in her suite since September 2004. T9 had two cats and she was specifically looking for somewhere that allowed pets. She came across an apartment ad which did not reference "N/P" ("no pets"). She contacted the building manager, EB, who told T9 that pets were not an issue. T9 went to view the suite, and noticed that the current tenants of that suite had a cat. During her inspection of the suite, T9 told EB she had two cats, and EB said she would be fine with that as the current tenants in the suite had a cat. T9 would not have signed the tenancy agreement if she had not been told that her cats were not allowed.

From the outset of T9's tenancy to September 2007, the previous landlord entered T9's suite on several occasions, and T9 never received any verbal or written notice that she was not allowed to have her cats.

When the landlord took over the building in September 2007, T9 received the same welcome package as T6. T9 also submitted as evidence a copy of the welcome package she received, which she noted made no mention of a pet policy.

Since September 2007, agents of the landlord entered T9's suite at least four times: on November 8, 2007 to conduct a suite inspection; on August 15, 2008 to install a door closer; and in November 2008 for a fire and safety inspection and the yearly suite inspection. T9 was not present in her suite on any of those occasions, but there was a cat litter box in the living room as well as cat food and water dishes in the kitchen/dining

area. T9 provided photographs of those items as supporting evidence.

On one occasion in the late spring or early summer of 2008, the building manager, BB, saw T9 leaving the building with her cats in their carry cases.

One of T9's cats passed away in July 2008. She still has one cat in the suite. T9 decided to move out of the building, and she was not served with a notice to end tenancy.

T9 acknowledged that she is a legal assistant and has legal knowledge. She signed the tenancy agreement, despite the pet clause, because she viewed the suite with a cat in it and she received verbal permission from EB. T9's response to EB's affidavit, in which EB denied giving T9 verbal permission, was that EB had sworn a false affidavit.

Tenant 10 has lived in her suite since March 1992. At the time that T10 signed her rental agreement, she asked the building manager at the time, GB, if she could have a cat. GB said it was okay, lots of people in the building had pets. GB herself had two Dobermans. T10 insisted on receiving written permission from GB for a pet. T10 submitted in her evidence a copy of her written permission. The note, dated February 4, 1992 and signed by GB, reads as follows: "[T10] – This gives permission for one spayed or neutered cat, for the length of the tenancy in [T10's suite]."

In May 1992 T10 adopted a cat, which lived in T10's suite with her until it died in January 2001. In April 2004, T4 was going away for an extended period of time, and T10 adopted T4's cat. That cat has resided with T10 in her suite since that time.

The current landlord took over the building on September 21, 2007. Approximately one week later, T10 invited BB into her suite to inspect the bathroom wall around the bathtub. BB met T10's cat and petted it. BB saw T10's cat again a few weeks later, when repairs were done to T10's bathroom wall. On November 7, 2007, AW and BB inspected T10's suite. T10 was not present, but T8, who cleans T10's suite, was present and T8 observed that both AW and BB saw T10's cat on that date. Between

October 2007 and November 2008 BB saw T10's cat on several other occasions: when he attended at T10's suite to repair a burner on the stove; when smoke alarms were checked; when door closers were installed; and when the second annual suite inspection was done.

On November 26, 2008, T10 received a "No Pets" notice from the landlord. T10 emailed AW and asked him to rescind the notice, since she had written permission to have a cat. The landlord acknowledged the written permission letter and informed T10 that they would not follow through with serving an eviction notice on her.

T10 submitted as supporting evidence a letter from another tenant who has lived in the building for over 40 years and always known it to be a pet-friendly building.

Tenants 1 to 10 initially applied for an order that the landlord comply with the Act, regulation or tenancy agreement. In the hearing, the tenants clarified that they sought an order that set aside the warning letters that the tenants received, and they wanted the landlord to honour the verbal or default permission they received to have their cats.

Tenants 1 to 7 subsequently applied to cancel the notices to end tenancy that they received on January 6, 2009. The tenants submitted that the notices were not valid because the landlord "at best took a laissez-faire approach" toward enforcing the pet clause of their tenancy agreements, and therefore that clause cannot be construed as a material term.

The relevant evidence of the landlord was as follows.

The former building manager, EB, wrote two letters dated December 12, 2008 and January 7, 2009 and swore one affidavit dated January 14, 2009, all of which the landlord submitted as documentary evidence. In all three documents, EB stated that she did not give verbal permission to any of the applicant tenants to have a pet. EB was not aware of any of the tenants' cats, with the exception of T10, who had written permission to have a cat. EB denied owning a cat, but stated that she did babysit her daughter's

cat “for a short period.” EB retired from her position as building manager when the landlord took over the building in September 2007, but she continues to reside as a tenant in the building. EB did not appear as a witness to give oral testimony in the hearing.

The general manager of the landlord, AW, gave testimony in the hearing as follows. AW has been a property manager of the landlord for 11 years, and he currently manages approximately 1500 rental units in several buildings.

AW did inspect every suite in the building in November 2007. During those inspections he was looking at the physical conditions of each unit. He spent about one minute in each of the units. He did not recall seeing any pets during those inspections, and he was not looking for pet accessories.

Under cross-examination, AW acknowledged that he did spend more than one minute in T3’s apartment. He denied saying “hi kitty” to T3’s cat, and explained that he does not like cats so he would not use the word “kitty.” AW also denied ever seeing T5’s cat. AW was not aware of any pets in the building until he saw T2’s cat in mid-December 2008. At that time, AW asked BB who had pets.

Upon determining which tenants had pets, the landlord issued warning letters to those tenants, and followed up with notices to end tenancy. The landlord has a standard “no pets” policy in all of their buildings, unless written permission has been given. The landlord’s position regarding the materiality of the pet clause was that the landlord has to know what is coming into the building, in order to make informed decisions and address health and safety issues for all tenants. If a tenant has a pet, allergens will get into the carpets, the underlay and the wood, and the carpets may have to be removed and replaced after a pet has been present in an apartment. The landlord also needs to know if pets have had their shots.

The current building manager, BB, gave testimony in the hearing as follows. BB lives not in the tenants’ building, but in another building across the street, and therefore his

interactions in the tenants' building are at a minimum. BB usually did not enter the tenants' suites for fire inspections or repairs, because he doesn't like to enter tenants' suites. He would open the door for the contractors, and then stand near the door while the contractors entered. BB denied any knowledge of T3's cat. BB does not recall saying "hi kitty," and he would not use the word "kitty" because English is not his first language. BB did see T2's cat in the hallway through the summer of 2008, but he assumed that T2 had written consent. BB was not aware of any other cats in the building.

The landlord also submitted as supporting evidence a photograph depicting a "no pets" sign on the front entrance of the building, as well as copies of written permission letters for T10 and one other tenant (not an applicant in this matter) to have a pet.

In the case of T10, the landlord accepted the written permission that T10 received to have a cat and the landlord intends to comply with T10's tenancy agreement. In the case of Tenants 1 to 9, the landlord viewed the tenants' pets as a breach of a material term of their tenancy agreements. The landlord therefore had cause to serve notices to end tenancy on Tenants 1 through 7, and the notices should be upheld.

Analysis

The landlord and the tenants provided submissions on several points of law, including estoppel, waiver, agency, merger, parol evidence and material breach. I have reviewed and considered the relevance of all of those submissions, as well as the documentary, photographic and testimonial evidence of the landlord and the tenants, in reaching my decision in this matter.

In regard to the tenants' application for an order that the landlord comply, I find that I can make no such order. The tenants did not direct me to, nor am I aware of, any part of the Act or regulation with which I might order that the landlord comply. I therefore must look to the tenancy agreements.

In the case of Tenant 10, who had written permission to have a cat for the duration of her tenancy, the landlord acknowledged the written consent and agreed to comply with Tenant 10's tenancy agreement. Therefore, I need not order that the landlord comply in the case of Tenant 10.

In the case of Tenants 1 to 9, the tenants sought an order for the landlord to accept their verbal permission, or the landlord's implied permission, as a term of their tenancy agreement. In regard to the tenants' evidence as weighed against the affidavit of EB, I accept the evidence of the tenants. EB did not appear to give testimony in the hearing, and her evidence was therefore not subject to cross-examination. The tenants gave specific, credible evidence regarding their discussions with EB, and I accept that Tenants 1 and 4 through 9 were given verbal permission to have a cat or cats. Tenants 2 and 3 did not ask for or receive verbal permission to have cats; however, I accept the evidence of T2 and T3 that EB knew or ought to have known that they had cats. Tenant 1 only sought and received verbal permission for cats before signing the first of his three tenancy agreements, but I accept T1's evidence that EB knew or ought to have known that T1 had cats during his second and third tenancies.

I find that the verbal permission or knowledge of the landlord does not amount to an implied term of the tenancy agreements, because such an implied term would be in direct contradiction to the specific clause in each of the tenancy agreements requiring written permission to have a pet. I therefore find I cannot order that the landlord comply with the tenancy agreements, and I dismiss the portions of the tenants' applications regarding an order that the landlord comply.

In regard to the notices to end tenancy, I find that the notices are not valid on the basis that the pet clause of the tenancy agreements do not constitute a material term.

I accept the overwhelming evidence of the tenants that the building has had a long history of allowing pets, and that many tenants have obviously had pets, predominantly cats. The previous landlords were clearly not concerned with enforcing the pet clause in their tenants' tenancy agreements. Ads for available suites did not specify that no

pets were allowed. The building managers under the previous landlords casually gave verbal permission for tenants to have pets, and it is likely that both GB and EB themselves had pets in their suite while acting as agents of the landlord.

When the current landlord took possession of the building in September 2007, they sent a notice to tenants which, in part, set out rules that the landlord wished to draw to the tenants' attention. This notice did not make any reference to pets; it did, however, make reference to such items as making loud noises and producing strong odours from cooking.

I accept the evidence of the tenants that their cats, or their cat accessories including litter boxes and large cat furniture, were present and obvious in the tenants' suites when AW and BB did suite inspections in November 2007. The evidence of the landlord was that the pet clause of the tenancy agreements was material because the landlord had to consider the health and safety of all tenants, and yet AW also testified that during the November 2007 suite inspections he was not looking for signs of pets in any of the suites. I find that the landlord's agents must at the very least have been willfully blind to the presence of cats in the tenants' suites when they carried out the 2007 suite inspections.

BB stated in his testimony that he had been aware since the summer of 2008 that T2 had a cat, and he did not confirm for himself that she had written consent. AW received an email from T8 on June 9, 2008 in which she specifically referenced her two cats, and AW responded to that email. Yet AW did not at that time embark on any investigation of T8's cats or the presence of any other pets in the building. The landlord did not even begin to issue warning letters to the tenants until November 2008, more than a year after they took over the building.

A material term is a term that is so important that the most trivial breach of that term gives the landlord the right to end the tenancy. In this case, the previous and current landlords or their agents allowed or even encouraged many tenants, including all of the applicants in this matter, to breach the pet clause of their agreements over the course of

many years. Based on the actions of the previous and current landlords, I find that the pet clause in each of the tenants' current tenancy agreements was not considered a material term, either at the time the tenants signed those tenancy agreements or at any time after their current tenancies commenced. Therefore, as the tenants did not breach a material term, the notices to end tenancy for breach of a material term are not valid.

Conclusion

The tenants' applications for an order that the landlord comply are dismissed.

As the tenants were not successful in that portion of their applications, they are not entitled to recovery of their filing fees for the cost of their initial applications.

The notices to end tenancy are cancelled, with the effect that the tenancies continue.

As Tenants 1 to 7 were successful in cancelling the notices to end tenancy, they are entitled to recovery of their filing fees for their second set of applications. The filing fee of Tenant 1 was \$50, and the filing fee of Tenants 2 through 7 was \$25 each. Tenants 1 to 7 may deduct the amount of their filing fee on their second application from their next month's rent.

Dated March 4, 2009.