

## **DECISION**

**Dispute Codes:** MNDC, OLC and FF

### **Introduction**

Application was made by the tenants on June 2, 2011 seeking a monetary award for the equivalent of one month's rent on the grounds that the landlord should be ending the tenancy by way of Notice to End Tenancy for landlord use rather than by reliance on the end date of an extended fixed term rental agreement. The tenants also seek an order that the landlord comply with the legislation and recovery of the filing fee for this proceeding.

### **Issues to be Decided**

This application requires a decision on whether this tenancy, set to end on July 31, 2011, is concluding under a fixed term agreement or whether it should be ending under a Notice to End Tenancy for landlord use under section 49 of the Act.

### **Background and Evidence**

This tenancy began on August 1, 2009 under a fixed term agreement which, for a period, defaulted to a month to month tenancy. Rent is \$1,300 per month and the landlord holds a security deposit of \$625 paid on July 26, 2009.

The rental building has been sold with a closing date on or about August 1, 2011.

On November 26, 2010, the parties signed a fixed term rental agreement set to end on May 31, 2011 which stipulated that the tenants were to vacate the rental unit at the end date. As the end date approached, the landlord agreed to extend it to July 31, 2011, again with the requirement that the tenants give up vacant possession on the end date.

The tenants expressed the view that, as the property had been sold, they were entitled to a Notice to End Tenancy for landlord use which would have qualified them for one

month's free rent under section 51 of the *Act* as was the case with the one other set of tenants in the rental building.

While the tenants acknowledging signing the agreement to extend the tenancy on May 31, 2011, they question whether the addendum was binding.

For one reason, they stated that the property manager had presented the document for signature while they were celebrating the verbal extension and the fact that the landlord had agreed to waive the rent payment for June 2011 in compensation for work they had done on the property.

For another reason, they stated that, having had some spirituous drink in their celebration, their capacity to contract was diminished and the agreement unenforceable. They also implied duress, stating that the property manager had told them that failure to sign the addendum could result in their eviction.

## **Analysis**

I find that the fixed term agreement which initially ended the tenancy on May 31, 2011 and was extended by an addendum on May 31, 2011 to July 31, 2011 is a lawful conclusion to the tenancy.

I find that the property manager did not mislead the tenants by advising that it was in their best interest to sign the addendum. The existing agreement returned vacant possession to the landlord on May 31, 2011, and without the extension, the landlord would have been in a position to seek an Order of Possession on the grounds that the tenants were overholding.

With respect to the question of capacity, the tenants both signed the addendum and, by their own accounting, the capacity of one was less compromised than the other's at the time. That, and the fact that signing the addendum appears to have been a prudent decision, I do not see sufficient justification to challenge the addendum signed on May 31, 2011.

I find that the landlord has complied with the legislation in ending the tenancy with the extended the fixed term agreement and I find that the tenants are not entitled to a month's free rent under section 51 of the *Act*.

### **Conclusion**

This application is dismissed without leave to reapply and the tenants remain responsible for their own filing fee..

June 23, 2011