



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, FF, O

### Introduction

This matter dealt with an application by the tenants to obtain an Order for the landlord to comply with the Residential Tenancy Act (Act), Regulations or tenancy agreement, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on August 08, 2011. The landlord was deemed to be served the hearing documents, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Are the tenants entitled to an Order for the landlord to comply with the Act, Regulation or tenancy agreement?

### Background and Evidence

Both parties agree that this tenancy started on March 01, 2004. This was a fixed term tenancy which reverted to a month to month at the end of the fixed term. Rent for this unit was \$1276.00 at the end of the tenancy.

The tenants testify that after living in the unit for six years without incident or complaints they received a letter from the landlord to inform them they must get rid of their second cat or face an eviction. The tenants testify that they did not realize at the time that their tenancy agreement limited them to one cat and states the landlord has always known for the last six years that they have had two cats and has only now chosen to send them a breach letter. They state this appears to stem from the problems they have had with their unit and their requests for the landlord to comply with the *Act* and make the necessary repairs. They state they filed an application for dispute resolution at that time and a hearing was held and a settlement was reached about their concerns. They state they also had to make complaints to the City concerning a fire hazard in their unit. Since then they have received breach letters from the landlord about the additional cat and about subletting their unit to a third tenant.

The tenant's claim they are being harassed by the landlord as they have not sublet their unit and have just had visitors staying with them for periods of time. They state this latest breach letter concerning their cat is six years late and has been issued to them out now of spite. The tenants also state the landlord has used breach letters that relate to terms of their tenancy agreement that are not contained within their agreement. They state they have a residential tenancy board agreement and the landlord refers to sections of an agreement from the Landlords Association tenancy agreements that they do not have. Due to this the tenants seek to have these letters overturned and seek an Order for the landlord to comply with the *Act* when issuing breach letters they should relate to the terms of their tenancy agreement.

The landlord testifies that the tenancy agreement in place for these tenants clearly states only one cat is allowed. He states that he did see another cat in the unit some time after the

tenants moved in and he called the female tenant about this. He testifies that she told him she was just looking after this other cat for a friend.

The landlord testifies that whenever he had to go to the unit the cats would go and hide so he was not aware the tenants continued to have two cats. He states the first time he became aware of it was when the tenants sent him an e-mail in July, 2011 to inform him someone was coming to look after their cats, The landlord testifies that he also found out about the second cat at the previous hearing held on April 11, 2011. The landlord testifies the tenants have allowed their cats to run around in the hallways and he has lost two other tenants due to this because they suffered from allergies to cats.

The landlord testifies the tenant's cats have also caused damage to the floors in the unit because of their water bowls

The landlord testifies the tenants had a guest staying in their unit for up to three months. He states he sent the tenants a breach letter concerning this. After they received the letter the female tenant telephoned him and said how he dare restrict her right to have guests in the unit. He states at that time he explained to her they could only have guests there for 15 days.

The tenants dispute the landlords' testimony. They state the landlord says he only knew about the additional cat in July, 2011 however they state they had also informed him in December, 2010 when they e-mailed him about someone looking after the cats and he has been in their unit throughout their tenancy and would have seen the cats and evidence that two cat's resided there. The female tenant states she does not recall ever telling the landlord she was looking after a friend's cat at the start of their tenancy. The tenants state the landlord and his building manager both knew they had two cats. The tenants dispute the landlords' testimony that they let their cats roam free in the hallway. They state the cats were always attended if they were in the hallway for a maximum of 10 minutes however since the landlord complained about this they have stopped allowing the cats out. The tenants state they were always willing to make adjustments and accommodate the landlords' wishes but instead of discussion he just serves them with breach letters.

The tenants dispute the landlords' testimony that the cat's water bowl has damaged the floor. They state this is not true as the same marks are also in other areas of the floor where the water bowl was not in situ. The tenants dispute the landlords testimony that their guest stayed with them for three months as she stayed for two weeks, went away for a week and then came back to stay for another week. They state the landlord told them they can only have guests stay for a maximum of 15 days however they say their tenancy agreement does not state this.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants application for an Order for the landlord to comply with the *Act*, I find the breach letters issued to the tenants do not contain the relevant information for the tenants concerning the residential tenancy agreement that they have in place with the landlord. Instead the landlord has relied on portions of a residential tenancy agreement that is not in place between them. In this instance I deem these breach letters to be invalid as they do not relate to the correct tenancy agreement and therefore contain misleading information concerning which sections of the tenancy agreement the landlord has claimed the tenants have breached. However, a landlord is entitled to issue breach notices to a tenant and I cannot Order the landlord to comply with the *Act* with regard to these letters when there is no provision under the *Act* for the landlord to ensure the information given in these letters is correct.

However, as the tenants have brought this application forward in good faith and the landlord has issued invalid breach letters I find the tenants are entitled to recover the **\$50.00** filing fee from the landlord and may deduct this amount from their next rent payment due to the landlord.

### Conclusion

The tenant's application for an Order for the landlord to comply with the *Act* is dismissed.

The landlord must ensure any future breach letters relate to the tenancy agreement in place between the parties if he wishes to relay on these letters.

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: September 07, 2011.

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Residential Tenancy Branch