



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPB, CNC, MNDC, PSF, RPP

### Introduction

This hearing dealt with applications by both the landlords and the tenants. The landlords apply for an order of possession on the basis that the tenants breached an agreement and on the basis that the landlord has cause. The tenants apply to cancel a notice to end tenancy for cause, for a monetary order for money owed or compensation for damage or loss, for an order that the landlords provide services or facilities required by law, and for an order that the landlords return the tenants' property.

At the outset of the hearing, the tenant advised that he was withdrawing the application for a monetary order since the amount of loss or damages exceeds the \$25,000 jurisdiction of the RTB.

One of the landlords and one of the tenants attended the teleconference hearing and both gave affirmed evidence.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession on the basis that the tenants breached an agreement?

If not, should the notice to end tenancy for cause be cancelled?

If the tenancy is not at an end, should the landlords be ordered to provide services or facilities required by law?

Should the landlords be ordered to return the tenants' property?

### Background and Evidence

#### **Breach of Agreement**

The landlord gave evidence that the parties entered into a tenancy agreement on August 1, 2013 for a fixed term ending January 31, 2014. The landlord provided a copy of a document he asserted is a true copy of the tenancy agreement (the "landlord's tenancy agreement"). The landlord's tenancy agreement is a completed version of the

RTB form "Residential Tenancy Agreement". On page 2 of the landlord's tenancy agreement, under "Length of Tenancy", box b) is checked and reads:

"for a fixed length of time 6 month ending on 31 January 2014.

At the end of this fixed length of time

[box ii) is checked]

ii) the tenancy ends and the tenant must move out of the residential unit

if you choose this option, both the landlord and tenant must initial in the boxes to the right"

The box labelled "Landlord's Initials" contain the initials "T.T.". The box labelled "Tenant's Initials" contain a "squiggle" which appears to be someone's initials.

The landlord gave evidence that he completed the landlord's tenancy agreement with the tenant who attended the hearing. The landlord's evidence is that he witnessed the tenant initial the box marked "Tenant's Initials". The landlord's evidence is that it is the practice of the landlord with new tenants to always enter into a six-month fixed term wherein the tenancy ends at the end of the fixed term, as a way of finding out whether the tenants are good tenants. The landlord's evidence is that if everything works out with new tenants, the landlord's practice is to enter into another tenancy agreement with them at the end of the fixed term. In this case, the landlords did not wish to enter into a second tenancy agreement with the tenants.

The tenant gave evidence that he understood the tenancy agreement was for a fixed one-year term. The tenant's evidence is that he did not initial the box labelled "Tenant's Initials" and the "squiggle" in the box is not his initials.

The landlord's tenancy agreement contains other spaces for tenant's initials on pages 1, 2, and 3 of the addendum and each of these spaces contains a similar "squiggle". The tenant denies that he initialled any of these spaces. The landlord's tenancy agreement contains a space for the tenant's signature on page 6. The tenant agrees it is his signature on page 6.

### **Cause for Ending Tenancy**

The landlord gave evidence that he served the tenants with a Notice to End Tenancy for Cause (the "Notice") on September 26, 2013 by personal service. The effective date specified on the Notice is October 31, 2013. The tenant did not dispute that he received the Notice on September 26, 2013.

Pursuant to Section 47, a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant

receives the notice. If a tenant does not make application for dispute resolution within those 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The tenants applied to dispute the Notice on January 10, 2014, approximately 3.5 months after they received the Notice.

The tenant provided evidence of the following circumstances in the fall of 2013:

1. The tenants' truck was stolen in November 2013
2. The tenant was hit by a car and injured on December 22, 2013
3. The landlord did not respond the tenants' complaints regarding problems with the rental unit including: lack of heat, two elements on the stove do not work, smoke detectors do not work, it is difficult to access the garbage area, and the bathroom window does not close properly.

The Notice indicates two reasons why the landlord sought to end the tenancy:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord gave evidence that both reasons stem from the tenants storing large amounts of personal possessions in the common areas of the rental property, both within the apartment building and outside on the grounds and in parking stalls. The landlord's evidence is that from the first day of the tenancy, the tenants left items in the common areas. These items include wood, garbage, a cabinet, scrap metal, a gas tank, drywall, a dishwasher, carpet, a garbage can, and vinyl. He said the tenants left an unlicensed car in someone else's parking stall and left a great deal of garbage in front of the building which led to complaints from neighbours. The landlord's evidence is that the tenants left items in the parking lot, outside the front door of the building, in the laundry room, in the hallway blocking a fire exit, and on the ground beside the building.

The landlord gave evidence that he personally gave the tenants a letter on September 8, 2013 telling the tenants to remove all of their belongings from the common areas within one week. The landlord gave evidence that he personally gave the tenants another letter on September 16, 2013 telling the tenants to move their belongings from the common areas within three days.

The landlord gave evidence that he hired a removal company to haul away all of the tenants' belongings from the common areas of the building on December 28, 2013. The landlord also said he had an unlicensed car towed from the rental building parking lot on around December 25, 2013. The landlord gave evidence that he provided a letter to the tenants dated January 2, 2014 to invoice them for the \$400.00 cost of removing their belongings to the dump.

The tenant denied having received the September 8 and September 16, 2013 letters. The tenant denied that the tenants stored personal items in the laundry room, hallway, or outside the front door.

The tenant said the landlord agreed the tenant could store certain items outside on the grounds. The landlord denies that he agreed to this.

The tenant applies for an order that the landlord return his personal property, including rakes, brooms, a Dewalt drill, a 1973 Fiero automobile, and restaurant equipment that was stored in his parking stall. The landlord states he does not have any of these items in his possession.

I have not summarized all the evidence regarding the landlord's cause for seeking to end the tenancy, for the reasons stated below.

### Analysis

I accept the landlord's evidence that the tenant initialled the box marked "Tenant's Initials" acknowledging that the tenancy was a fixed term ending January 31, 2014 and that the tenants were required to move out on that date. The evidence of the landlord and tenant was contradictory on several significant points, including whether the landlord witnessed the tenant initial the box indicating the tenants must move out at the end of the fixed term. Considering the totality of the evidence, I found the landlord to be a more credible witness than the tenant. I found the landlord's evidence to be more plausible, and the landlord was also able to provide documentary evidence in support of some of his assertions. For these reasons, I find that the landlord's tenancy agreement is an accurate copy of the tenancy agreement signed by the parties. I find the tenant did initial the disputed box on the tenancy agreement and therefore agreed to move out on January 31, 2014.

Pursuant to Section 44(1)(b), the tenancy ended on January 31, 2014. For that reason, I grant the landlord an order of possession which must be served on the tenants.

Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

Since the tenancy has ended, it is not necessary that I consider whether the Notice should be cancelled. However, I note that the tenants applied to cancel the Notice well beyond the 10 day deadline for doing so. According to Section 66 of the Act, I can extend a time limit provided for in the Act only in exceptional circumstances. I find that the tenants have not provided evidence of exceptional circumstances. For that reason, I cannot extend the deadline to dispute the Notice. I dismiss the tenants' application to cancel the Notice.

Since the tenants did not dispute the Notice within time, pursuant to Section 47 they are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, which was October 31, 2013. The landlord is also entitled to an order of possession on that basis.

Since the tenancy is at an end, it is not necessary that I consider whether the landlord should be ordered to provide services or facilities required by law. For that reason, I dismiss the tenants' application for an order that the landlord provide services or facilities required by law.

I accept the landlord's evidence that the landlord does not have any of the tenants' property in his possession. For that reason, I dismiss the tenants' application for an order that the landlord return their personal property.

### Conclusion

I grant the landlord an order of possession. The tenants' application is dismissed.

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: February 24, 2014

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Residential Tenancy Branch

