



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OPT, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants: to obtain an Order of Possession for the rental suite; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and to recover the filing fee from the Landlord for the cost of making the Application.

The Tenants appeared for the hearing and provided affirmed testimony and documentary evidence prior to the hearing. The Tenants served a copy of the Application and the Notice of Hearing documents to the Landlord by registered mail on April 30, 2014. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this as grounds for a review. As a result, I find that the Landlord was deemed served with hearing documents on May 5, 2014.

The Landlord failed to appear for the hearing and did not provide any written evidence prior to the hearing despite being served with the Notice of Hearing documents in accordance with the Act. As a result, the Tenants’ undisputed affirmed testimony provided during the hearing and their documentary evidence provided prior to the hearing was carefully considered in this decision as follows.

### Issue(s) to be Decided

- Should the Tenants be issued with an Order of Possession?
- Are the Tenants entitled to monetary compensation as a result of the Landlord breaking the tenancy agreement?

### Background and Evidence

The male Tenant (“DM”) testified that on March 29, 2014 they saw an advertisement for the rental of a the basement suite on the internet; a copy of the advertisement was

provided as evidence for the hearing. On March 31, 2014 the Tenants went to view the rental suite with the Landlord and agreed that they would rent the suite. On April 4, 2014 the Landlord and Tenants met and signed a written tenancy agreement which was provided as evidence. The tenancy agreement shows that the tenancy was due to start on May 1, 2014 for a fixed term of two years and monthly rent of \$1,600.00 was payable by the Tenants on the first day of each month. Attached to the tenancy agreement was a document titled 'Appendix' and contained 'additional notes', one of which was:

"Tenant has agreed to help out with pets from time to time if Landlord is away (Landlord will pay for all costs)".

[Reproduced as written.]

DM testified that the Landlord explained that they could collect the keys for the rental suite and pay the security deposit on April 27, 2014.

DM testified that on April 26, 2014 they received several calls from the Landlord who explained that she was now moving to another city for a permanent job and that the Tenants would be required to look after the Landlord's pets on a full time basis. The female Tenant ("JB") testified that she explained to the Landlord that this would not be appropriate as their understanding of the agreement involved looking after the Landlord's pets on an occasional basis which included feeding the dogs and letting them out. JB testified that the Landlord now insisted that she wanted them to have her pets with them in their rental suite.

DM testified that the Landlord phoned again later that day and explained that she had found a pet sitter who would be able to look after the pets which the Tenants were pleased about. However, DM explained that the Landlord again phoned them and told them that because they could not look after her pets that she had a right to cancel the tenancy and the rental suite was not going to be provided to them and indicated that it would be given to the pet sitter.

The Tenants supplied a number of e-mail exchanges that were had following on from these conversations to support their above testimony.

The Tenants testified that they had been left high and dry three days before their tenancy was due to start and they had already made arrangements to leave their current residence and were now staying in alternative accommodation with their property in storage and were still looking for another rental suite.

While the Tenants requested an Order of Possession for the rental suite, they were reluctant to move back into the suite as their relationship with the Landlord had been strained; in addition, they feared further repercussions if they did move back into the rental suite.

The Tenants also sought monetary relief from the Landlord for breaking the fixed term tenancy and claim two month's rent in the amount of \$3,200.00. DM testified that this amount was based on a 2 Month Notice to End Tenancy for Landlord's Use of the Property, which the Landlord would have had to give to them if the Landlord wanted the property for her own use; I explained to the Tenants that a 2 Month Notice to End Tenancy involved one month's compensation and could not be issued by a Landlord in a fixed term tenancy.

### Analysis

Section 16 of the Act explains that the rights and obligations of a Tenant and the Landlord begin from the date the tenancy agreement is entered into, whether or not the Tenant ever occupies the rental unit. Furthermore, section 14(2) of the Act explains that a term of a tenancy agreement may not be unilaterally changed or amended unless the Tenant and Landlord agree to the amendment.

Based on the above provisions of the Act, I find that the Landlord had no grounds to end the tenancy. A term in a tenancy agreement that requires a Tenant to look after a pet is a collateral and separate agreement to the terms associated with the tenancy and failure of a Tenant to meet the terms of a collateral agreement does not give authority for a Landlord to end the tenancy in the manner in which it was.

I find that there is a substantial difference between the Tenants having to look after the Landlord's pets on an **occasional** basis as required by the additional notes to the tenancy agreement, and having to look after the Landlord's pets in their own suite on a more **permanent** basis because the Landlord had got a job and was no longer going to be present to look after her pets. Furthermore, I find that this term of the tenancy agreement was oppressive to the Tenants and was an unconscionable term which the Landlord would not have been able to enforce.

In considering the Tenants' request for an Order of Possession, I am sympathetic to the Tenant's concerns above living in this unit due to the potential consequences this could have on both parties and I find that on the balance of probabilities, it is likely that the Landlord has re-rented the suite to other renters or the dog sitter. As a result, if the Tenants were issued an Order of Possession for the rental suite, this would likely

displace another innocent third party renter for which I do not have the authority under the Act to end the tenancy for.

Therefore, I find that it is more appropriate to provide remedy to the Tenants through monetary compensation rather than risking the potential displacement of a third party and a strained continuing tenancy with the Landlord and Tenants. The Tenants indicated during the hearing that they would also prefer this outcome.

In assessing the amount to be awarded to the Tenants, I have considered the short period of notice given to the Tenants by the Landlord in ending the tenancy which was a breach of the Act and the potential impact this caused the Tenants, as aggravating factors. Furthermore, I find that the reasons for ending the tenancy by the Landlord were based on an unconscionable term which would not have been enforceable.

As a result, I find that it is appropriate in this case to award the Tenants monetary compensation for the loss of the tenancy in the amount of one month's rent as this would have allowed sufficient time for the Tenant's to find an alternative rental suite. I also find that the Tenants are entitled to the \$50.000 filing fee for the cost of making this Application, pursuant to section 72(1) of the Act. Therefore the Tenants are awarded a total amount of \$1,650.00 in monetary compensation.

### Conclusion

For the reasons set out above, I grant the Tenants a Monetary Order pursuant to section 67 of the Act in the amount of **\$1,650.00**. This order must be served to the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Landlord fails to make payment.

The Tenants' Application for an Order of Possession 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 Act.

Dated: May 26, 2014

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Residential Tenancy Branch

