



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order for the landlord to comply with the *Residential Tenancy Act* (the *Act*), regulations or tenancy agreement and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. Neither party provided any documentary evidence for this hearing. The testimony of the parties has been reviewed and is considered in this decision.

### Issue(s) to be Decided

Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

### Background and Evidence

The parties agree that this tenancy started on April 01, 2012 for an initial term of one year. The tenancy has since continued on a month to month basis. Rent for this unit is \$750.00 per month due on the 1<sup>st</sup> of each month.

The tenant testified that on May 26, 2014 they received a phone call from the landlords saying they were going to have to sell the house and the landlords were going to issue

papers for the tenant to sign to end the tenancy in two months. The landlord came to the tenant's unit and said the tenant had to sign a mutual agreement to end the tenancy. The tenant testified that they did not understand the agreement and thought it was just a form they had to sign to enable the landlords to sell the house.

The tenant testified that a mutual agreement is a form where both sides are satisfied that the tenancy will end. The tenant testified that he signed this form on May 26, 2014 and agreed on that form that the tenancy would end on August 01, 2014. The landlords also signed the form.

The tenant testified that the next day they looked up the *Act* and found out that they had been misled by the landlords and in fact the landlords should have provided a Two Month Notice to End Tenancy for Landlords Use of the Property, which should only have been issued once the property had been sold. The tenant testified that the landlords would then have had to provide compensation equal to one month's rent to the tenant. The tenant testified that the landlords got the tenant to sign the mutual agreement to end the tenancy under false pretences to avoid paying compensation to the tenant.

The tenant testified that the landlords have abused the process and have listed the house for sale informing the tenants that they can continue to live in their unit as long as they can move out without further notice. The tenant testified that the parties went to the Residential Tenancy Branch (RTB) and spoke to an Information Officer who advised the landlord that he had to issue a Two Month Notice. The landlords said that that was too much trouble as they already had the mutual agreement to end the tenancy.

The tenant seeks an Order for the landlord to comply with the *Act* and issue the tenant with a Two Month Notice to End Tenancy and give the tenant compensation of one months rent. The tenant testified that he is vacating the unit on August 01, 2014.

The landlord EC testified that they had informed the tenant that they were planning on selling the property. The landlord testified that their realtor gave the landlords the forms for a mutual agreement to end the tenancy and these forms were given to each of the tenants residing in the three units of the house. This tenant did sign the form and were not coerced into doing so. The landlord MC testified that the form is a one page document which clearly states it is a mutual agreement to end the tenancy and the landlords went through the form with the tenant and decided on the dates the tenant had to move out.

The landlord EC testified that now the tenant is saying the landlords did not give the tenant the correct form but the tenant signed the mutual agreement and so the landlords do not have to issue a Two Month Notice to End Tenancy for Landlords Use of the Property. The landlord testified that they did agree to go to the RTB office with the tenant and the officer there said this was the right form if the tenants agreed to end the tenancy.

The tenant cross examined the landlord and asked the landlord if they had mentioned to the tenant that they were giving the tenant two months notice to end the tenancy and did the landlords explain what the mutual agreement form was. The landlord MC responded that they did inform the tenant that this was a mutual agreement and this agreement did give the tenant two months to move out.

The Arbitrator asked the tenant if the tenant had read the mutual agreement before signing it. The tenant responded that he did not read it he had just signed it.

### Analysis

I have carefully considered all the sworn testimony of both parties. I refer the parties to s.44 (c) of the *Act* which states:

**44 (1)** *A tenancy ends only if one or more of the following applies:*

*(c) the landlord and tenant agree in writing to end the tenancy.*

I find the tenant and landlords both signed this mutual agreement to end the tenancy and as such the landlord does not have to issue the tenant with a Two Month Notice to End Tenancy. A tenant should not sign any legal document or agreement without first reading and understanding the document or agreement. If the tenant was unhappy about the content of the agreement that the tenant signed on May 26, 2014 then the tenant had the option of either not signing it and therefore not agreeing to end the tenancy on August 01, 2014 or seeking advice from the RTB concerning the document before signing it.

The tenant seeks an Order for the landlord to comply with the *Act* with regards to serving the tenant with a Two Month Notice to End Tenancy and paying compensation to the tenant to an amount equivalent to one month's rent. As the tenant signed the mutual agreement to end the tenancy I cannot order the landlords to disregard that agreement as it is a legal and binding agreement made between the parties. I cannot therefore Order the landlords to serve a Two Month Notice to End Tenancy to the tenant.

Furthermore a tenant is only entitled to compensation equivalent to one month's rent under s.51(1) of the *Act* if an actual Two Month Notice to End Tenancy under s. 49 of the *Act* has been served upon the tenant.

Consequently it is my decision that the tenant's claim that the landlords have not complied with s. 49 or s. 51 of the *Act* cannot be upheld.

### Conclusion

The tenant's application is dismissed without leave to reapply.

As the tenant has been unsuccessful with their application the tenant must bear the cost of filing their own application.

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: July 23, 2014

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Residential Tenancy Branch

