



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNC, FF, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for more time than permitted by the *Residential Tenancy Act* to dispute a notice to end tenancy, for an order cancelling a notice to end tenancy, and to recover the filing fee from the landlord for the cost of the application.

Both tenants and an agent for the landlord attended the hearing, and each gave affirmed testimony. The agent testified that he is an owner of the rental property although not named in the tenants' application, and other agents of the landlord have acted for the landlord during the course of this tenancy.

The tenants also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the landlord. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Has the landlord established that the notice to end tenancy has been issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

The landlord testified that this tenancy began on October 15, 2013 and the tenants still reside in the rental unit. The rental unit is a house on an acreage parcel and the tenants' area is about  $\frac{1}{2}$  or  $\frac{3}{4}$  of an acre, fenced. Rent in the amount of \$1,400.00 per month was advertised, and the tenants agreed to do some maintenance in exchange for a reduction in rent, which the landlord agreed to and rent was set at \$1,200.00 per

month, payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$600.00 which is still held in trust by the landlord.

The landlord further testified that the tenants have not done any maintenance to the rental property, and that they were given a tenancy agreement to sign but refused to saying that everything that was on it was wrong and was not what the parties had verbally agreed to.

The tenants were told not to park their huge truck on the driveway and the landlord told them where to park it, but the tenants continued to park the semi in the driveway. The landlord has not seen the driveway recently and does not know whether or not it is damaged.

Access to the rental property is through the front gate only, however, the tenant continues to drive through the wrong gate and have scared the neighbour's sheep. Also, the tenants cut part of the fence away, and cut a tree down, to park their old truck and camper there, as well as other vehicles, and the property looked like a junk yard. An Airstream trailer in front yard has just been removed by the tenants this week. The tenants also took down a greenhouse without the landlord's permission and the landlord's father went to get it. He has been threatened by one of the tenants to be charged with trespassing and the tenant threatened to shoot neighbour's sheep.

The landlord further testified that there have been no issues with respect to the payment of rent on time.

The landlord caused the tenants to be served with a notice to end the tenancy by posting it to the door of the rental unit on May 31, 2014. A copy of the notice has been provided by the tenants, and it is dated May 31, 2014 and contains an expected date of vacancy of June 30, 2014. The notice is entitled "Notice To End Tenancy – Residential Unit" and is 4 pages in length. The reason for issuing it states: "the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property." The landlord also testified that since the tenants moved in, they have acquired a St. Bernard dog, chickens and a pig, and had another person living in a trailer on the property, contrary to the agreement.

The landlord asks for an Order of Possession of the rental unit and property, and testified that the form used to end the tenancy was obtained from the internet from the Ministry of Solicitor General government site.

The first tenant testified that the landlord collected rent and the security deposit at the commencement of the tenancy and never returned. The landlord's father returned with a tenancy agreement to sign about 6 months later, but the parties didn't sign it.

The tenant further testified that the landlord was aware that the tenants had 4 vehicles when they moved in, and the greenhouse was included.

The tenant pruned trees, did some painting, but ran out of paint, changed 3 light fixtures, and cleaned up leaves, but denies any excessive damage, just pruning. The tenant stopped doing work because he didn't get paid.

The tenant further testified that he parked the truck in back.

The tenants found the landlord's notice to end tenancy posted to the door of the rental unit on June 1, 2014.

The other tenant testified that there is no written tenancy agreement, and nothing stating that the tenants can't park their truck in the front or have animals. She further testified that the landlord knew at the commencement of the tenancy that the tenants had more than 2 vehicles and that they intended to get the animals.

The tenant denies threatening anyone and denies any extraordinary damage to the rental unit.

### Analysis

Where a notice to end tenancy is disputed by a tenant, the onus is on the landlord to prove the validity of the notice which may include the reasons for issuing it.

The tenants do not deny that the notice was served by posting it to the door of the rental unit, and the landlord testified it was placed there on May 31, 2014. The tenants have applied for more time to dispute the notice than permitted by the *Act*, and I find that since the tenants' application was filed on June 10, 2014, the tenants have applied within the time set out.

The *Act* states that in order to be effective, the notice given by the landlord must be in the approved form. In this case, I find that the landlord has served a notice ending the tenancy that is not in a form approved by the *Act* or the regulations. The landlord testified that he got the form from a government website, but I find that it is not a form provided on the Residential Tenancy Branch website.

The landlord claims that the tenants have caused extraordinary damage to the rental unit, but called no witnesses and provided no evidence of that, and the tenants have denied any extraordinary damages.

In the circumstances, I find that the landlord has failed to establish that the notice was issued in accordance with the *Residential Tenancy Act*, and I hereby cancel it, and the tenancy continues.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee. I order that the tenants reduce rent for a future month by that amount as recovery.

### Conclusion

For the reasons set out above, I hereby cancel the notice to end tenancy issued by the landlord and dated May 31, 2014, and the tenancy continues.

I hereby order that the tenants reduce rent for a future month by \$50.00 as recovery of the filing fee.

This order is final and binding and may be enforced.

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: August 14, 2014

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Residential Tenancy Branch

