



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

OPC, O, FF

### Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

At the hearing, the landlords advised that they had submitted evidence to the Residential Tenancy Branch on October 1. I did not receive that evidence in advance of the hearing, nor did the tenant. Rule 3.15 of the Residential Tenancy Rules of Procedure provides that respondents must serve evidence both to the Branch and to the applicants 7 days prior to the hearing. In this case, the landlords submitted their evidence just 5 days in advance and as neither I nor the tenant had access to the evidence, the hearing proceeded without the evidence. However, the parties agreed that I could consider the evidence after the hearing.

### Issue to be Decided

Should the notice to end tenancy be set aside?

### Background and Evidence

The parties agreed that the tenancy began on September 1, 2013. The tenancy agreement contains an addendum which provides in part that the tenants are responsible for "lawn maintenance."

On June 16, 2014, the landlords served on the tenants a letter which provided as follows:

This is a written warning that you have 30 days to have the yard/grass back to the standards which the yard was in when you entered the premises ...

On July 24 the landlords served on the tenants a 1 month notice to end tenancy for cause (the "Notice"). The Notice alleged that the tenants caused extraordinary damage to the property, have not done required repairs of damage and have breached a material term of the tenancy agreement.

The landlords testified that when the tenancy began, the yard and gardens were healthy, well manicured and in excellent condition and at the time they served the Notice, the grass was

burnt and the gardens were not properly cared for. They were particularly disturbed that the tenants had planted a pumpkin in the front garden bed and testified that they believed the pumpkin was overcoming the garden area and affecting expensive plants. They provided the tenants with fertilizer at the same time they gave the tenants the letter advising that they must restore the lawn and acknowledged that the lawn was somewhat better by the time they served the Notice but was still not up to their standards. The landlords claimed that they had a verbal agreement with the tenants that a very high level of care would be taken with the yard and gardens.

The landlords argued that the tenants left the back yard in a cluttered state, leaving the lawn mower outside, a pressure washer on the lawn and a weedeater lying on a plant. They claimed that they had received complaints from neighbours about the condition of the yard.

The tenants acknowledged that the grass was dry over the summer but testified that as soon as they received the June 16 letter, they immediately worked to restore the lawn to its former state. They denied that the pumpkin was affecting other plants in the garden. They testified that the back yard was no longer cluttered and argued that they had reasonably maintained the lawn and gardens throughout the tenancy. They testified that the lawn mower and pressure washer had been left outside just briefly and were now stored in the garage. The tenants believe they are meeting the standard of maintenance as required by the tenancy agreement.

### Analysis

The landlords have the burden of proving that they have grounds to end the tenancy. They have alleged that the tenants caused extraordinary damage to the property, have not done required repairs of damage and have breached a material term of the tenancy agreement.

The landlords' photographs show a dried lawn, which is not unusual during summer months, and gardens which could use attention. I am unable to find from the landlords' testimony or photographs that the tenants have caused damage, extraordinary or otherwise, to the property and I find that the landlords have not proven this as a valid ground to end the tenancy.

Because I have found that the tenants have not caused damage to the property, I find that the allegation of failing to do required repairs has not been proven.

Turning to the last ground, that the tenants have breached a material term of the tenancy, the landlords must prove that the term in question is so important that even the most trivial breach would give reason to end the agreement. I recognize that the landlords are passionate about the lawn and garden and had hoped to secure tenants who were equally passionate and held the same extremely high standards of maintenance. This does not appear to be the case and the simple requirement in the tenancy agreement for the tenants to do "lawn maintenance" is insufficient to compel them to keep the yard and gardens at the same level of upkeep as when the landlords cared for the grounds. If the landlords had wanted to require some level of care beyond what is merely reasonable, it was open to them to clearly define this standard of care in

the tenancy agreement. While lawn maintenance is a term of the tenancy agreement, it is vague and I find that had the landlords felt that a high standard of maintenance was a material term, they would have spelled out the tenants' obligations very clearly in the agreement so neither party would encounter any confusion. Although the landlords claimed to have had a conversation with the tenants outlining their expectations, I find that had this term been material, they would have reduced to writing those expectations. I find that the landlords have failed to prove that the tenants breached a material term of the tenancy agreement.

The landlords have failed to prove that they have grounds to end the tenancy. I order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

AS the tenants have been successful in their application, I find they should recover the filing fee paid to bring their application. The tenants may deduct \$50.00 from a future rental payment.

### Conclusion

The Notice is set aside and the tenants may recover their filing fee by deducting \$50.00 from their rent.

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: October 07, 2014

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Residential Tenancy Branch

