



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

Landlords: OPB, MNSD, MNDC, FF

Tenant: CNC, MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the landlords and the tenants.

At the outset of the hearing I clarified with the landlord that they intended to end the tenancy after issuing a 1 Month Notice to End Tenancy for Cause for breach of a material term and unreasonable number of occupants.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim to recover a portion of her security deposit or the landlords' claim for lost revenue. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The other claims by both parties are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss both the tenant's and the landlords' monetary claims. I grant the both parties leave to re-apply for these other monetary claims under separate and new Applications.

I note however, that the issue of security deposits was discussed in relation to the tenant's claim and I informed the parties how to deal with a potential overpayment of a

security deposit. The parties acknowledged they would discuss the issue outside of the hearing.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

### Background and Evidence

The parties agreed the original tenancy was between the landlords and the current tenant's parents. The parties agreed the original tenancy agreement was assigned to the tenant on or about February 10, 2016.

Both parties submitted copies of the original tenancy agreement signed by the original tenants on July 20, 2015 and by the current tenant on February 10, 2016 for a 1 year fixed term tenancy that began on June 1, 2015 for a monthly rent of \$900.00 due on the 1<sup>st</sup> of each month.

In the section of the tenancy agreement regarding the length of the tenancy agreement the parties had checked off the clause that states: "At the end of this fixed length of time: the tenancy may continue on a month-to-month basis or another fixed length of time". I note also that the landlord and the original tenant also initialed the boxes that line up with the option that states: "At the end of this fixed length of time: the tenancy ends and the tenant must move out of the residential unit. If you chose this option, both the landlord and tenant must initial in the boxes to the right."

The tenant submitted into evidence a copy of 1 Month Notice to End Tenancy for Cause issued by the landlord on June 1, 2016 with an effective vacancy date of June 30, 2016 citing there are an unreasonable number of occupants in a rental unit or the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The landlord submitted that their practice is to only rent on a fixed term basis and that each time they require a new tenancy agreement to be entered into by the end of the fixed term. The landlord submitted that the issue was discussed with the original tenant prior to signing the original tenancy agreement.

The landlord stated that they have been trying to get the current tenant to agree to and sign a new tenancy agreement but she has been refusing to do so.

The current tenant submitted that she is of the understanding that once the fixed term ended the tenancy converted to a month to month tenancy and she is not required to sign a new tenancy agreement.

The parties agree that 4 people now live in the rental unit including the tenant; her adult daughter; and the tenant's two grandchildren (one is a baby). While the tenant confirms she did not officially advise the landlord when her daughter moved into the unit she did tell the landlord this when they met on the street in mid-May 2016.

The landlord's written submission states that the female landlord, on May 14, 2016 was told by the tenant that her daughter was living with her. The statement goes on to say that "Angela S. did not object but was surprised that we were not notified prior to the daughter moving in."

The landlord stated that he felt that 4 people living in a two bedroom rental unit where two are adults not in a couple relationship was an unreasonable number of people in the unit.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies there are an unreasonable number of occupants in a rental unit or the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Section 44(3) of the *Act* stipulates that if, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 6(3) of the *Act* stipulates that a term in a tenancy agreement is not enforceable if the term is inconsistent with the *Act* or regulations; the term is unconscionable; or the term is not expressed in a manner that clearly communicates the rights and obligations under it.

From the tenancy agreement submitted and despite any discussions the parties held prior to signing, I find, by virtue of the check mark in the box preceding the clause that the parties agreed that the tenancy may continue on a month to month basis at the end of the original fixed term.

I also find that, the parties did not check off the box preceding the requirement to vacate the rental unit at the end of the fixed term despite initialing the boxes that followed as per the requirement on the agreement if the parties agreed that the tenants must vacate at the end of the fixed term.

As such, I find the agreed upon term for this tenancy was that the tenancy could continue as either a month to month tenancy or for another fixed term agreement. However, I note that as per Section 44(3) of the *Act*, I find there is no obligation on either party to enter into a new fixed term but rather the tenancy may continue on a month to month basis if they do not enter into a new fixed term agreement.

Even if I were to accept that the parties had agreed they would be required to enter into a new fixed term agreement I find the act of checking the box that says the tenancy may continue on a month to month basis makes both terms contradictory and therefore not enforceable as per Section 6(3) that requires the terms to be expressed in a manner that clearly communicates the rights and obligations under it.

As a result, I find the landlords cannot rely on this ground to end this tenancy.

As to the landlords' position that the tenant has allowed an unreasonable number of occupants, I find that the landlord has provided insufficient evidence to show an unreasonable number of occupants. Additionally, I find, from the landlord's own submission that the female landlord did not object to the tenant's news that her daughter had moved in and gave no indication that the tenancy was in any jeopardy.

Based on the above, I find that a family with 2 adults and 2 children, when one of the children is a baby, does not constitute an unreasonable number of occupants.

As a result, I find the landlords cannot rely on this ground to end this tenancy.

Conclusion

As per the above, I dismiss the landlords' Application for Dispute Resolution in its entirety.

I order the 1 Month Notice to End Tenancy for Cause issued by the landlords on June 1, 2016 is cancelled and the tenancy remains in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the paid by the tenant for this application. I order the tenant may recover this sum by reducing her next rent payment pursuant to Section 72(2)(a) of the *Act*.

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 12, 2016

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Residential Tenancy Branch