



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

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### Introduction

This hearing dealt with the tenant's application to dispute a notice to end tenancy for landlord's use, as well as for monetary compensation related to garbage collection.

The hearing first convened on July 15, 2016. On that date, the tenant and an agent for the former owner called in to the teleconference hearing. The parties agreed that the rental unit had been sold, and a new owner took over as landlord on or about June 14, 2016. The tenant did not name the current owner as a respondent in her application. The tenant and the agent of the former landlord described a complicated situation, and it was not clear whether the new owner sought to end the tenancy or not. I therefore found it was necessary to adjourn the hearing to allow the tenant to amend her application and add the new owner as a respondent.

The hearing reconvened on September 9, 2016. On that date, the tenant, the former owner, the agent for the former owner and an agent for the current owner all participated in the teleconference hearing. I amended the tenant's application to correct the name of the former owner's agent and add the name of the current owner as a respondent.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. The parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is either of the notices to end tenancy for landlord's use valid?

Is the tenancy for a fixed term or month to month?

What is the amount of the rent, and what is or is not included in the rent?

Is the tenant entitled to monetary compensation as claimed?

### Background and Evidence

The rental unit is a suite in a house. The tenancy began on May 1, 2013 as a fixed-term tenancy to end on April 29, 2014. The tenant was to vacate the rental unit at the end of the fixed term. The rent was \$995.00 plus one third of the utilities. Garbage collection was included in the rent. The tenancy agreement was then altered to indicate that a second fixed term commenced on January 1, 2014 and would end on December 1, 2014. The agreement contains no other alterations. None of the parties to the dispute provided any other written tenancy agreement.

On May 26, 2016, the landlord served the tenant with a notice to end tenancy for landlord's use. The notice indicated that the reason for ending the tenancy was that all of the conditions for sale of the rental unit had been satisfied and the purchaser asked the landlord to give the notice because the purchaser intended in good faith to occupy the rental unit.

On June 14, 2016 the current owner emailed the former owner's agent and indicated that they wished to cancel the notice to end tenancy and communicate directly with the tenant for terms and the tenant could pay them the rent directly. On June 30, 2016 the agent forwarded that email to the tenant, with the additional message "Please find the cancellation notice from the new buyer."

On June 24, 2016 the current owner served the tenant with a second notice to end tenancy for landlord's use. This notice indicates two reasons for ending the tenancy: first, the landlord intends to occupy the rental unit; and second, the landlord intends to renovate or repair the unit in a manner that requires the unit to be vacant.

### *Tenant's Evidence*

The tenant submitted that her tenancy is for a fixed term ending December 31, 2016, as verbally agreed by the former landlord. The tenant stated that she had a few conversations with the current owner, who agreed that the tenancy would go until December 31, 2016. The tenant submitted that the landlord withdrew the first notice to end tenancy, and they reinstated the tenancy by accepting rent after serving the tenant with the second notice to end tenancy.

The tenant stated that there was a rent increase last year, and she currently pays \$1,020.00 per month for rent and \$50.00 per month toward utilities, with any balance of outstanding utilities to be reconciled at the end of the year.

The tenant applied for monetary compensation of \$6,500.00 on the basis that the landlord removed the tenant's garbage collection services, which were included in the rent. The tenant stated that the landlord stopped her garbage collection services in July 2014, and though she contacted the landlord about the services, the landlord did not resolve the issue. The tenant stated that she has remained without garbage collection to this day. The tenant stated that she calculated the amount of compensation by calling a private garbage collection company and

enquiring about their rates, and then multiplying the weekly rate by 24 weeks in 2014 and 52 weeks per year for 2015 and 2016. The tenant acknowledged that she did not actually hire a garbage collection company. Nor did she provide any receipts to otherwise establish actual costs for disposing of her garbage.

#### *Landlord's Reply*

The former landlord stated that the second fixed term ended on December 1, 2014, and when the property was sold, they informed the tenant that she was in a month-to-month tenancy. The former landlord confirmed that they served the first notice to end tenancy on behalf of the current owner, and then they informed the tenant when the current owner asked them to cancel the first notice.

The former landlord submitted that the tenant did not give them notification regarding the need to pick up garbage; nor did she submit any invoices or receipts for garbage expenses.

The current landlord stated that they cancelled the first notice because they believed at the time that the tenant was in a fixed term tenancy that would end on December 31, 2016. The current landlord acknowledged that they did accept rent cheques from the tenant but they did not cash them.

#### Analysis

I find that both notices to end tenancy for landlord's use are invalid. The current owner clearly expressed that they wished to cancel the first notice and deal directly with the tenant. The landlord accepted rent from the tenant after serving the second notice, and they did not indicate to the tenant that they were accepting the payment for use and occupancy only or otherwise communicate that they were not reinstating the tenancy. It is not relevant whether the landlord cashed the cheques or not.

I find that the current tenancy is a month-to-month tenancy. A fixed term tenancy must be in writing. Further, the former landlord did not agree that there was an agreement for a fixed term; rather, they informed the tenant that her tenancy was month-to-month.

The landlord provided no evidence to contradict the tenant's evidence that her current rent is \$1,020.00 and she pays an additional \$50.00 per month toward one-third of the utilities and will reconcile any balance. Neither did the landlord dispute the tenant's submission that garbage collection is included in the rent. I find that the monthly rent is \$1,020.00 and includes garbage collection. The tenant is responsible for one-third of the utilities, and in addition to paying \$50.00 per month toward utilities, the tenant must reconcile any outstanding amount at the end of 2016 or the end of her tenancy, whichever comes first.

I find that the tenant is not entitled to any monetary compensation, as she failed to provide evidence that she incurred any expenses for garbage removal.

Conclusion

The two notices to end tenancy for landlord's use are invalid and of no force or effect.

The tenancy is a month-to-month tenancy with rent of \$1,020.00 and garbage collection included in the rent. The tenant is responsible for one third of the utilities and may continue to pay toward utilities as set out above.

The tenant's monetary claim is dismissed without leave to reapply.

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: September 29, 2016

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Residential Tenancy Branch