



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, CNL, FF

### Introduction

This is an application brought by the tenant(s) requesting an order canceling a Notice to End Tenancy that was given for landlord use, and requesting recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

### Issue(s) to be Decided

The issue is whether or not to cancel or uphold a Notice to End Tenancy that was given for landlord use.

### Background and Evidence

The landlord testified that on April 29, 2017 he served the tenants with a two month Notice to End Tenancy for landlord use, as he wants to live in the rental unit.

The landlord further testified that his former partner signed an amendment to the lease without his knowledge and certainly without any agreement from him to do so, and therefore he does not believe he should be bound by that agreement, as he believes it has been fraudulently created.

The landlord further states that at the time that this amendment was signed he was a 50% owner of the property and therefore should have been included in the signing of any amendment.

The landlord further states that the tenants knew that he was a co-landlord and therefore should have been included in the signing of any amendments to the tenancy agreement.

The landlord is therefore requesting that the Notice to End Tenancy be upheld.

The tenants testified that they were not aware that one of the landlords had signed amendment to the lease with them, without the knowledge of the co-landlord.

The tenants further testified that they had discussed with the landlord, prior to signing the amendment, their wish to have a second tenant added to the tenancy agreement, and when they signed the amendment it was done in good faith.

The tenants further testified that the second tenant gave up his own rental unit to move into this rental unit, and would not have done so had they not been assured of an extension to the lease.

The tenants ask that this amendment to the lease be upheld and the Notice to End Tenancy be canceled.

### Analysis

It is my decision that the parties are bound by the amendment to the lease and therefore this tenancy will continue until March 31, 2018.

I accept the landlords claim that this amendment to the tenancy agreement was signed without his knowledge, however at the time that the amendment was signed his partner was legally one of the landlords, and therefore if one of the landlords agrees to rent the unit to the tenants, the tenants have a binding agreement.

I also accept the tenant's claims that they were not aware that this agreement was being signed without the knowledge of one of the landlords and therefore the tenants entered into this agreement in good faith.

Section 49(2)(c) of the Residential Tenancy Act states:

49(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(c) if the tenancy agreement is a fixed term tenancy agreement, **not earlier than the date specified as the end of the tenancy. (My emphasis)**

However, section 53 of the Residential Tenancy Act states:

**53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Therefore since this fixed term tenancy agreement has an end of tenancy date of May 31, 2018, the Notice to End Tenancy is deemed changed to be effective on that date.

I therefore will not cancel the Notice to End Tenancy, and have, instead, issued an Order of Possession for the effective date of May 31, 2018.

I will however allow the tenants request for recovery of their \$100.00 filing fee as the landlord had put an incorrect end of tenancy date on the Notice to End Tenancy.

#### Conclusion

The request to cancel a Notice to End Tenancy has been dismissed, however the end of tenancy date has been amended to May 31, 2018 and an Order of Possession has been issued for that date.

I have allowed the tenants request for recovery of their filing fee and I therefore order that the tenants may make a one-time deduction of \$100.00 from future rent payable to the landlord.

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: June 20, 2017

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Residential Tenancy Branch

