



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      OPC FF CNC MNDC LRE OLC FF

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks and/or to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The parties advised the tenants had vacated the rental unit as of November 10, 2017 therefore the only outstanding issue was the tenant's application for monetary compensation for damage or loss.

### Issues

Are the tenants entitled to monetary compensation for damage or loss?

### Background and Evidence

The tenancy for this condominium unit began on February 3, 2017 with a monthly rent of \$1500.00 payable on the 1<sup>st</sup> day of each month. The tenancy agreement specified the lease was for a 1 year fixed term expiring on February 1, 2018.

The tenant is claiming an amount of \$5000.00 for pain and suffering, loss of income and moving expenses. The tenants acknowledge entering into a one year fixed term lease agreement but state they were seeking to enter into a long term tenancy. In August of 2017 they were advised by the landlord that she needed to sell the rental property. They were promised by the landlord that she would attempt to sell to an investor who would let them stay beyond the fixed term lease period. They were advised the landlord had a buyer and they now had a new landlord for whom a showing was arranged. They were provided conflicting information for the prospective buyer in regards to her intentions to continue renting the unit versus having her family move into the unit. The prospective buyer eventually backed out of the sale. They found this situation extremely upsetting and felt the landlord and the landlord's realtor has misrepresented that the rental property had already been sold.

After this incident, the tenants insisted the landlord apply to the Residential Tenancy Branch in order to schedule any future showings of the property. They no longer trusted the landlord was looking out for their interest in finding a buyer that would extend the lease. The tenants refused access to the landlord for the purpose of taking pictures to list the property and subsequently refused access to a realtor who had arranged a showing for a prospective buyer. The landlord had provided 24 hour notice to the tenant for this showing. Subsequently, the tenants were served with a 1 Month Notice to End Tenancy on September 29, 2017 which the tenants had originally applied to dispute. The tenants ended up looking for and finding a new place to live and voluntarily vacating the rental unit.

The landlord agent M.M who is also one of the landlord's realtors testified that they were actively pursuing a buyer for investment purposes only as they were sensitive to the fact the rental unit was occupied by the tenants.

The landlord's witness M.G. who is also the landlord's realtor testified that he only advised the tenants that he had found a buyer and this did not mean the deal was finalized or the property had sold. He never advised the tenants the property had sold or that they had a new landlord. Any prospective buyers were advised the tenants were in a fixed term lease which would need to be honoured until the end of the term. The first prospective buyer changed her mind. After this, the tenants would not permit any

further showings for the property despite being provided 24 hour Notice in accordance with the Act.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

As per section 29 of the Act, a landlord may enter a rental unit that is subject to a tenancy agreement upon providing at least 24 hours written notice to the tenant including the purpose for entering, which must be reasonable.

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

I find the tenant was legally given Notice to enter the rental unit for a reasonable purpose of showing the rental unit to a prospective buyer. I find the landlord did not make any misrepresentations to the tenants in regards to the property being sold. The first prospective buyer backing out of any potential sale was not in the landlord's control. There is no requirement under the Act for the landlord to apply for a schedule of showings as demanded by the tenants.

The tenants were also legally served with a 1 Month Notice under the Act. The tenants had a right under the Act to dispute this Notice which in fact they did make an application for. Had the tenants not voluntarily vacated the rental unit prior to the date of the hearing, the onus would have been on the landlord to establish cause for ending the tenancy as indicated on the 1 Month Notice. As the tenants voluntarily vacated the rental unit, I find the landlord did not contravene the Act or the tenancy agreement. Further, the tenants clearly entered into a 1 year fixed term lease and the landlord was not obligated to honor the lease beyond this date nor was the landlord obligated to find prospective buyers who would honor the lease beyond this date.

As I have found the landlord did not act contrary to the Act or the tenancy agreement, the tenants' application for loss is dismissed in its entirety.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The tenants' application is dismissed in its entirety 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: December 18, 2017

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Residential Tenancy Branch