



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNL, FF

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated February 28, 2018.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on February 28, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on March 6, 2018. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided:**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated February 28, 2018?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### **Background and Evidence:**

On October 10, 2016 the parties entered into a one year fixed term written tenancy which provided that the tenancy would start on November 1, 2016 and end on October 31, 2017. The rent was \$1650 per month.

The tenants produced a copy of a second fixed term tenancy agreement that provided that the tenancy would start on November 1, 2017 and end on October 31, 2018. That agreement indicates it was signed by the tenants on October 26, 2017 and signed by the landlord on October 27, 2017.

The landlord is elderly and in poor health. The representative of the landlord acknowledged the landlord has legal capacity but state she was signed the second fixed term tenancy agreement under duress. The representative of landlord also testified the tenants failed to provide a copy of this second fixed term tenancy agreement at the time and they only became aware of it when the tenants provided copies of documents for this hearing.

GF is the son of JF. He gave the following evidence:

- The landlord has been dealing with the Fire Marshall and the City Hall relating to the problems with the property and including the rental unit. Certain repairs need to be done in order to comply with fire and bylaw requirements. He had hoped to complete those repairs before the Municipality conducted an inspection. However, the tenant reported the suite to the Fire Marshal who subsequently reported it to the bylaw inspectors. He is concerned that the Municipality may issue an order in the near future requiring the tenant to vacate the rental unit for a few months in order for the landlord to complete appropriate repairs.
- The tenants initially advised the landlord that they were not prepared to sign a fixed term agreement and were only prepared to stay on a month to month basis. However, they subsequently changed their minds. This caused problems for the landlord as they started to look for other tenants.
- The tenant(s) knew he was acting as a agent for his mother. They forced her to sign the second fixed term tenancy agreement. His mother does not remember signing it.
- He mother is in ill health. She broke her arm around the middle of October 2017. The medication she was on lead to her suffering a heart attack in December. He lives in the rental unit with his mother. However, he will be moving out of town shortly. The rental unit will be needed to house a caregiver.
- The tenants failed to provide the landlord with a copy of the second fixed term tenancy agreement after it was returned to the tenants.

The tenant gave the following testimony:

- She denies that the landlord was forced to sign the rental unit under duress. Her husband gave her the tenancy agreement and she returned it to the tenants a day later. They offered to pay additional rent but the landlord stated that was not necessary.
- The tenants advised GF prior to the end of October they were not interested in staying in the rental unit unless they parties signed a fixed term tenancy. The tenants have a child in school and wished to remain in the school catchment area.
- No one from the Municipality or the Fire Marshall office has come to inspect the suite while they have been present.
- They have experienced construction noises and dislocation for about a year now.
- She denies calling the City Hall or Fire Marshall office to report problems with the rental unit.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Analysis:

The landlord served a 2 month Notice to End Tenancy. Section 49(2) of the Residential Tenancy Act provides as follows:

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

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (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).**

After carefully considering all of the evidence I determined the landlord failed to establish sufficient cause to end the tenancy on the date set pursuant to the 2 month Notice to End Tenancy for the following reasons:

- I determined the landlord failed to prove that JF signed the second fixed term tenancy agreement under duress for the following reasons:
  - While the JF is elderly and not in good health this does not mean she does not have the ability to bind herself in contract. The representative of the landlord acknowledged she has legal capacity.
  - I accept the testimony of the tenants that they advised the landlord they were only interested in remaining in the rental unit if the parties agreed to a fixed term. The tenancy agreement confirms the tenant's evidence that the tenants left the tenancy agreement with the landlord and she signed and dated the tenancy agreement the next day. This is not consistent with a party forcing someone to sign a contract in their presence.
  - The landlord had sufficient time to get assistance should she wish. Her son was living with her at all material times.
  - The landlord also had the opportunity to take a copy of the tenancy agreement before returning it to the tenant.
  - There is insufficient evidence to prove that the landlord's son GF told the tenants that they should be dealing with him only.
- I determined the landlord is bound by the tenancy agreement which she entered into. The landlord failed to provide sufficient evidence to establish that the second fixed term tenancy agreement should be set aside because of duress. 49(2)(c) provides that a landlord cannot end a fixed term tenancy agreement earlier than the date specified as the end of the tenancy in the agreement. Thus the earliest the landlord could end the tenancy would be October 31, 2018.
- The representative of the landlord testified that he expects the Fire Marshall or the Municipal bylaw officer will order the landlord to close the suite. That issue is not before me in this hearing. If a government agency orders the landlord to close the rental unit the landlord may have grounds to end the tenancy for cause under section 47 of the Act.

#### Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the 2 month Notice to End Tenancy dated February 28, 2018 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

As the tenants have been successful with their application I ordered that the landlord reimburse the tenant's the cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

**This decision is final and binding on the parties.**

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: May 21, 2018

---

Residential Tenancy Branch