



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNC, MNDCT, OLC, FFT, OPB

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the one month Notice to End Tenancy that was received by the Tenant on July 25, 2019.
- b. A monetary order in the sum of \$3480
- c. An order that the landlord comply with the Act, regulation and/or the tenancy agreement
- d. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord seeks an Order of Possession on the basis that the term of the fixed term tenancy has expired.

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. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the tenants are entitled to an order cancelling the one month Notice to End Tenancy dated July 25, 2019?
- c. Whether the tenants are entitled to a monetary order and if so how much?
- d. Whether the tenants are is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- e. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The landlord listed in the tenancy agreement is a student who is attending university in Toronto. The Agent for the landlord is her mother.

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on August 1, 2017 and end on August 1, 2018. The rent was \$2200 per month payable on the first day of each month. The tenant paid a security deposit of \$1100 at the start of the tenancy. The parties subsequently entered into a second fixed term tenancy agreement that provided that the tenancy would start on September 1, 2018 and end on September 1, 2019. The rent was \$2280 payable in advance on the first day of each month. The tenancy agreement contained a clause that provided that the tenants would vacate the rental unit at the end of the fixed term. The clause refers to section 17.1 of the Residential Tenancy Act Regulations. The tenancy agreement did not provide a reason why the landlord seeks to end the fixed term after one year. .

On July 25, 2019 the landlord served a notice on the Tenants that stated that the fixed term tenancy was coming to an end on September 1, 2019 and the tenant would have to vacate at that time. .

The tenant objected stating the landlord failed to use the correct forms required by the Residential Tenancy Act. The e-mail stated that the landlord intended to sell the rental property.

The tenant further seeks a monetary order on the basis that they have not been able to fully use the master bedroom for an extended period of time. The Application for Dispute Resolution states that on December 10 2018 the master bedroom leaked water from the balcony. Ongoing inspections and repairs took place that was completed around June 10 2019. The tenants coordinated with the contractors to facilitate the repairs. He and his wife lived in the guest room for 6 months. He requested a rent reduction in April and was denied saying would consider when we renewed.

The tenant produced photographs showing the damage to the master bedroom. He testified he missed work to facilitate the access for the contractors and others. Further, they were forced to live in very unhealthy condition because of the water. Finally the landlord failed to do what work with contractors etc. to allow for the completion of the work in a reasonable time period.

The average one bedroom rent is \$1,700 cost of our unit \$2,280 difference claimed is 580.00 x 6 months.

The landlord testified as follows:

- She worked with the contractors and strata to allow for the fixing of the leak. The tenant may not have been aware of the efforts she made. She had no obligation to advise the tenant.
- The tenancy became a month to month tenancy after the first fixed term tenancy expired.
- She wants to move into the rental unit with her husband's parents. She is presently living in a condo in Vancouver but she feels that it is too small.
- She acknowledged the email of July 25, 2019 indicates that she intends to sell the rental property. However that was only one consideration. The market is not strong now and she does not wish to sell at the present time.
- The rental unit is not uninhabitable and that the tenants are exaggerating the reduced value of the tenancy.

Landlord's Application:

After carefully considering all of the evidence I determined the landlord failed present sufficient evidence to establish just cause to end the tenancy after the end of the fixed term for the following reasons:

- Section 17.1 of the Residential Tenancy Act Regulations provides as follows:

“Fixed term tenancy — circumstances when tenant must vacate at end of term  
13.1 (1) In this section, "close family member" has the same meaning as in section 49 (1) of the Act.

(2) For the purposes of section 97 (2) (a.1) of the Act [prescribing circumstances when landlord may include term requiring tenant to vacate], the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that

(a) the landlord is an individual, and

(b) that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.”

- The tenancy agreement does not state that the landlord or close family member intends to move in.
- The agent for the landlord states she intends to move into the rental unit. I determine that the landlord failed to prove that she is acting in good faith when she states this for the following reasons:
  - As of July 25, 2019 the reason provided by the landlord was that she intended to sell the rental unit.

- The landlord owns her own condo. The landlord failed to adequately explain why she might move from the condo she presently lives to this one.
- The landlord failed to provide sufficient evidence that her husband's parents intend to move in.
- The tenants have been seeking compensation for the reduced value of the tenancy because of a problem with a leak in the master bedroom which has lead to difficulties between the parties. .
- I do not accept the submission of the parties that was a month to month tenancy. It was month to month for a short period of time after the first fixed term tenancy expired. However, the parties signed a second fixed term tenancy agreement for a higher rent one month later.

In conclusion I dismissed the landlord's application for an Order of Possession on the basis that the tenancy was for a fixed term that has expired as the landlord failed to comply with section 17.1 of the Residential Tenancy Act Regulations. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. .

Tenants' Application to cancel a one month Notice to End Tenancy::

I determined the tenants are entitled to an order cancelling the one month Notice to End the tenancy contained in the letter of July 25, 2019. In order for the landlord to end a tenancy the landlord must use the approved government form. The landlord failed to do so. For the reasons set out above I determined the landlord failed to prove she is entitled to an Order of Possession based on the expiry of the fixed term.

Tenants' Application for a Monetary Order:

Policy Guideline #6 includes the following:

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**"Compensation for Damage or Loss**

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

**A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations." (my emphasis)**

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After carefully considering all of the evidence I determined the Tenants are entitled to a monetary order for the reduced value of the tenancy for the following reasons:

- The leakage from the balcony caused major damage to the carpets significantly reduced the value of the tenancy and the ability of the tenants to use the master bedroom.
- The leakage was not caused by the Tenants.
- The photographs show significant damage.
- I accept the testimony of the Tenants that they moved to the second bedroom and did not use the master bedroom for an extended period of time.
- The landlord testified she acted reasonably in facilitating the repairs. The tenants dispute this. I determined it is not necessary to determine this issue as the Policy Guideline provides that the landlord is liable even if the landlord has used reasonable efforts to minimize the disruption.
- I determined the enjoyment of the rental unit was further reduced because the tenant was forced to take time off work to coordinate the activities of the contractors, strata council, etc.
- I accept the evidence of the tenants that the average difference between a one bedroom and two bedroom rental unit is \$580 per month.

In the circumstances I determined the tenants had limited value to the master bedroom and are not entitled to the \$580 per month claimed. I determined that the tenants are entitled to compensation in the sum of \$500 a month for the six months claimed for a total of \$3000.

Monetary Order and Cost of Filing fee:

I ordered that the landlord pay to the Tenant the sum of \$3000 plus \$100 for the cost of the filing fee for a total of \$3100 such sum may be deducted from future rent. .

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In summary I dismissed the landlord's application for an Order of Possession. I granted the tenants application to cancel the one month notice to end Tenancy. I ordered that the landlord pay to the tenant the sum of \$3100 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: October 07, 2019

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Residential Tenancy Branch