



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNL, OPB, MNDCT, FFT, FFL

### **Introduction**

The hearing was convened in response to the cross applications.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied to set aside a Two Month Notice to End Tenancy, for a monetary Order for money owed or compensation for damage or loss; and to recover the fee for filing an Application for Dispute Resolution. At the hearing the male Tenant withdrew the application to cancel a Two Month Notice to End Tenancy, as the rental unit has been vacated.

The male Tenant stated that on September 27, 2019 the Tenants' Dispute Resolution Package and evidence the Tenants submitted to the Residential Tenancy Branch in September of 2019 was served to the Landlord, via registered mail. The Agent for the Landlord acknowledged that these documents were received by the Landlord and the evidence was accepted as evidence for these proceedings.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession and to recover the fee for filing an Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The Agent for the Landlord stated that on September 27, 2019 the Landlord's Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch in September of 2019 was served to both Tenants, via registered mail. The male Tenant acknowledged that these documents were received by the Tenants and the evidence was accepted as evidence for these proceedings.

On October 02, 2019 the Tenants submitted evidence to the Residential Tenancy Branch. The male Tenant stated that he does not believe this evidence was served to the Landlord. As there is no evidence that this package of evidence was served to the Landlord, it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

#### Issue(s) to be Decided

Are the Tenants entitled to a monetary Order?  
Is either party entitled to recover the fee for filing this Application for Dispute Resolution?

#### Background and Evidence

The Agent for the Landlord and the male Tenant agree that the parties signed a tenancy agreement for a fixed term tenancy, the fixed term of which began on November 01, 2018 and ended on October 31, 2019.

The Agent for the Landlord and the male Tenant agree that this tenancy agreement required the Tenants to pay monthly rent of \$2,288.00 by the first day of each month.

The Agent for the Landlord and the male Tenant agree that the rental unit was vacated and that the keys to the unit were returned on October 29, 2019.

A copy of the tenancy agreement was submitted in evidence. The Agent for the Landlord stated that the tenancy agreement required the Tenants to vacate the unit at the end of the fixed term of the tenancy because the owner was moving back into the rental unit.

The Tenants submitted a letter from the Landlord, dated July 15, 2019. This letter informs the Tenant, in part that:

- If they wish to “renew” they must contact an Agent for the Landlord within three weeks of the date of the letter, at which time the Owner will be contacted to determine if the unit is still available for rent; and
- If they do not wish to “renew” they must contact an Agent for the Landlord within three weeks of the date of the letter and that written notice is required if the Tenants plan on vacating the rental unit at the end of the current lease agreement.

The Tenants also submitted a notice of rent increase, effective November 01, 2019, which they received with the letter dated July 15, 2019.

The Tenants submitted a letter from the Landlord, dated September 06, 2019. In this letter the Landlord informs the Tenant that the lease will not be renewed.

The Tenants submitted a series of email exchanged between the Tenants and an Agent for the Landlord in August Of 2019. In an email dated August 08, 2019 the Tenants inform the Agent they are considering continuing with the tenancy on a month-to-month basis. In an email dated August 12, 2019, the Tenants inform the Agent they would like to sign a new "lease". In an email dated August 13, 2019, the Agent for the Landlord informs the Tenants he has not yet heard from the owner regarding continuing with the tenancy.

The Tenants submitted an email sent to the Agent for the Landlord in attendance at these proceedings, in which they informed the Agent that they did not sign a new lease because they had not heard back from the agent for the Landlord with regard to renewing the "lease". In this email the Tenant advises that they were under the assumption that the tenancy was continuing.

The Agent for the Landlord and the male Tenant agree that the Tenants were not served with a Two Month Notice to End Tenancy for a Landlord's Use of Property.

The Agent for the Landlord stated that the Tenants were not given notice to end the tenancy because they were required to vacate the rental unit on October 31, 2019 on the basis of the fixed term of the tenancy agreement; the parties had not entered into a written agreement to extend the tenancy; and the owner was not willing to extend the tenancy. She stated that the Landlord applied for an Order of Possession as the Landlord was not certain the rental unit would be vacated by October 31, 2019.

The Tenants have applied for compensation of \$2,288.00, which is the equivalent of one month's rent. The Tenants are requesting this compensation because they believe they were misled by the Landlord into believing the tenancy would continuing as a result of the email communications they had with an agent for the Landlord in July and August of 2019.

The male Tenant stated that until they received a letter from the Landlord, dated September 10, 2019, the Tenants believed that the tenancy would be continuing. The Tenants submit that they should have been served with a Two Month Notice to End Tenancy for Landlord's Use, as would be required if the Landlord intended to move back into the rental unit and the Tenants were not required to vacate the rental unit at the end of the fixed term of the tenancy agreement. The Tenants submit that they

should also be entitled to the equivalent of two month's rent, which is what they would be entitled to if they had been served with a Two Month Notice to End Tenancy for Landlord's Use.

### Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenants signed a tenancy agreement for a fixed term tenancy, the fixed term of which began on November 01, 2018 and ended on October 31, 2018.

I find that the terms in this tenancy agreement, in regard to ending the tenancy, are contradictory.

Section 1.1 of the tenancy agreement declares that the tenancy ends at the end of the "lease agreement" and that the "tenant must vacate the rental unit". The term declares that the Tenants must vacate for "Landlord use of property".

Conversely, section 9 of the tenancy agreement specifies, in part, ways in which the tenancy may continue. This term stipulates the Tenants may, under certain conditions, "renew this lease" for a further term upon the same terms and conditions, with the exception of rent. This term requires the Tenants to give the Landlord written notice of their intent to renew "at least three (3) months prior to the expiration of the Term". The term specifies that a "failure to obtain written agreement of renewal or extension of this Lease from the Landlord, shall confirm end of tenancy at the expiry of the Lease".

The court held in *Derby Holdings Ltd. V. Walcorp Investments Ltd.* 1986, 47 Sask R. 70 and *Coronet Realty Development Ltd. And Aztec Properties Company Ltd. V. Swift*, (1982) 36 A.R. 193, that where there is ambiguity in the terms of an agreement prepared by a landlord, the contra proferentem rule applies and the agreement must be interpreted in favour of the tenant. I find the contra proferentem rule applies in these circumstances and that section 1.1 of the tenancy agreement was not enforceable. As section 1.1 of the agreement was not enforceable, I find that the Tenants were not obligated to vacate the rental unit at the end of the fixed term of the tenancy.

Section 44(3) of the *Residential Tenancy Act (Act)* stipulates that if, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date and the landlord and the tenancy have not entered into a new tenancy agreement, the landlord and the tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

As I have concluded that the tenancy agreement did not require the Tenants to vacate the rental unit on October 31, 2019 and there is no evidence that the parties entered into a new tenancy agreement, I find that this tenancy did not end pursuant to section 1.1 of the tenancy agreement and that it should have continued as a month to month tenancy, pursuant to section 44(3) of the *Act*.

I find that the portion of section 9 of the tenancy agreement which specifies that a “failure to obtain written agreement of renewal or extension of this Lease from the Landlord, shall confirm end of tenancy at the expiry of the Lease” contravenes section 44(3) of the *Act*.

Section 5(1) of the *Act* stipulates that landlords and tenants may not avoid or contract out of this *Act* or the regulations. I find that the term in the tenancy agreement that specifies the tenancy ends if the parties do not renew or extend the tenancy agreement is an attempt to contract out of the *Act*.

Section 5(2) of the *Act* stipulates that any attempt to avoid or contract out of this *Act* or the regulations is of no effect. As I have found that the term in the tenancy agreement that specifies the tenancy ends if the parties do not renew or extend the tenancy agreement is an attempt to contract out of the *Act*, I find it is of no effect. I therefore find that this tenancy did not end as a result of the parties failing to renew or extend the tenancy agreement.

As I have concluded that the tenancy did not end as the result of the terms of the written tenancy agreement and that it should have continued on a month to month basis after October 31, 2019, I find that I would not have granted the Landlord's application for an Order of Possession, had the Landlord not withdrawn that application. I therefore find that the Landlord is not entitled to recover the fee for filing this Application for Dispute Resolution and I dismiss the Landlord's application to recover that fee.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. The evidence shows that neither party gave notice to end this tenancy in accordance with these sections and I therefore find that this tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As I have concluded that the term of the tenancy agreement that required the Tenants to vacate the rental unit on October 31,

2019 was not enforceable, I find that this tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that this tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended, pursuant to section 44(1)(d) of the *Act*, when the Tenants returned the keys to the rental unit on October 29, 2019.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. On the basis of the undisputed evidence that the Tenants did not receive a Two Month Notice to End Tenancy for Landlord's Use, served pursuant to section 49 of the *Act*, I find that the Tenants are not entitled to compensation pursuant to section 51(1) of the *Act*.

After considering all of the evidence before me, I find that there was clearly some confusion about whether this tenancy would end on October 31, 2019. This confusion was due, in part, to the contradictory terms of the tenancy agreement. The confusion was due, in part, to communications between an agent for the Landlord and the Tenants in July and August of 2019, in which an agent for the Landlord informed the Tenant of the option to renew the lease and the Tenants responded that they wished to continue the tenancy. The confusion was also due, in part, to the notice of rent increase received by the Tenants, in which they are notified of a rent increase, effective November 01, 2019.

On the basis of the undisputed evidence, I find that the confusion regarding the date the tenancy was ending continued until the Tenants received the letter from the Landlord, dated September 06, 2019, in which the Landlord informs the Tenant that the lease will not be renewed.

I find that the confusion regarding the end of the tenancy was largely the result of both parties failing to understand their rights and obligations under the *Act*. Specifically, I find that both parties failed to understand that the Tenants were not obligated to vacate the rental unit on October 31, 2019.

As the Tenants were not obligated to vacate the rental unit on October 31, 2019, I find that they are not entitled to compensation for doing so. I find that if the Tenants had remained in the rental unit and proceeded with their Application for Dispute Resolution, including their application to cancel a Notice to End Tenancy, the Tenants would have realized they were not required to vacate the rental unit. I therefore find that the Tenants failed to mitigate any losses they experienced as a result of this tenancy ending, when they opted to vacate the unit prior to the date of this hearing.

Although the Tenants contend that the Landlord misled them about the need to vacate the rental unit on October 31, 2019, I find that there is insufficient evidence to show that the Landlord intentionally misled the Tenants. Rather, I find that the Landlord mistakenly believed that the tenancy was ending on October 31, 2019.

As both parties are equally obligated to understand their rights and obligations under the *Act*, I cannot conclude that the Tenants are entitled to compensation simply because the Landlord misunderstood the tenancy agreement and/or the legislation.

I find that the Tenants' application is without merit and I therefore dismiss their application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord's application for an Order of Possession was withdrawn at the start of the hearing. The Landlord's application to recover the fee for filing an Application for Dispute Resolution is dismissed.

The Tenants' application for to cancel a Notice to End Tenancy was withdrawn at the start of the hearing. The Tenants' application for a monetary Order and to recover the fee for filing an Application for Dispute Resolution is dismissed.

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: November 20, 2019

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Residential Tenancy Branch