



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPM, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession due to a Mutual Agreement to End Tenancy, and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord and an assistant attended the hearing. Two of the named tenants also attended with an agent. The landlord's agent and both tenants each gave affirmed testimony and the agents were given the opportunity to question the landlord's agent and the tenants.

During the course of the hearing, the landlord's agent indicated that in previous hearings both agents of the landlord have been permitted to remain in attendance and give testimony. However, I did not permit the second agent of the landlord nor the agent of the tenants to testify; witnesses must give independent testimony and I deemed the second agent of the landlord to be a witness. That person did not testify or take part in the hearing and was permitted to remain in attendance.

One of the landlords attended the hearing after it had commenced, but did not remain in attendance and disconnected within a minute of joining the call.

Also, during the hearing the landlord's agent indicated that all of the landlords' evidentiary material was provided to the tenants, and the tenants did not dispute that. However, the landlord's agent also indicated that no evidence from the tenants had been received. One of the tenants disputed that, stating that the landlord (ST) was provided with the evidence by email, and was permitted to provide proof of that after the hearing had concluded. I now have a copy of an email dated December 16, 2021 addressed to the landlord and copied to the landlord's agent with 4 attachments, which

are: proposed new lease, proposed new rental agreement, email to the landlord, Dispute Resolution proceeding. The body of the email states, "Please see attached documents submitted to the Residential Tenancy Branch today as evidence for the hearing on January 25, 2022." The email address of the landlord's agent is the same as provided by the landlord's agent during this hearing, and I am satisfied that the tenant has established that the evidence has been provided.

### Issue(s) to be Decided

Have the landlords established that the tenancy should end as a result of a Mutual Agreement to End Tenancy?

### Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on April 1, 2017 and reverted to a month-to-month tenancy after April 1, 2019, and 1 of the tenants still resides in the rental unit. Rent in the amount of \$835.00 was originally payable on the 1<sup>st</sup> day of each month, which was increased to \$868.40 effective March 1, 2019, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$417.50 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a condominium apartment and a copy of the tenancy agreement has been provided as evidence for this hearing by the landlords.

The tenancy agreement names 3 tenants, one of whom never resided in the rental unit, but is the mother of 1 of the other tenants and agreed to be responsible for the 2 tenants who did reside in the rental unit. The landlord's agent testified that that person had requested to be added to the tenancy agreement, and a parent may sign as a guarantee.

The landlord's agent further testified that on August 31, 2021 one of the 2 tenants who resided in the rental unit signed a Mutual Agreement to End Tenancy effective that day. A copy has been provided for this hearing. The landlord's agent testified that according to the *Residential Tenancy Act* if 1 party signs a Mutual Agreement to End the Tenancy, all tenants must vacate. The tenant who signed it may have moved out prior to August 31, 2021 but the landlord's agent does not know when that person actually vacated.

The landlord and the tenant who remained in the rental unit attempted to negotiate a new tenancy agreement, however the stumbling block was the amount of rent payable; the landlord wanted the new tenancy agreement to show higher rent, but it is not a rental increase.

**The first tenant** (AB) testified that he wasn't told that the other tenant who resided in the rental unit had signed a Mutual Agreement to End the Tenancy and found out after the fact. The tenant who signed the form was the common-law spouse of the tenant, and they have a 4 year old child together. The parties broke up and the tenant who signed the Mutual Agreement to End Tenancy actually vacated the rental unit on or about July 28, 2021. The Mutual Agreement to End Tenancy was done behind the tenant's back and the tenant learned that it had been signed in late August or early September, 2021, and the tenant continued to pay rent every month since, and has paid next month's rent.

The landlord (SV) was attempting to negotiate a new lease with the remaining tenant, which increased the rental amount to \$1,200.00 and stated that no one else could occupy the rental unit. The tenant could not afford that much rent, but offered to enter into a new tenancy agreement for \$1,000.00.

During cross-examination, the tenant testified that next month's rent has also been paid. No receipts have been issued by the landlord, but the tenant receives an e-mail each time confirming that the e-transfer was accepted by the landlord. No other written documentation has been provided by the landlord to indicate that the money is accepted for use and occupancy only.

**The second tenant** (SE) testified that both tenants who lived in the rental unit were on disability and it's hard to find a rental unit that accepts disabled tenants. The tenant (SE) wanted to ensure that the landlord got the rent money, and the landlord said that the guarantor had to be named in the tenancy agreement.

The tenant further testified that she was made aware that the tenant (CAL) vacated the rental unit in July, 2021, and the other tenant and landlord were attempting to negotiate a new lease. It didn't make sense that 1 party could leave and all would have to, and believes that the landlord and the other tenant (AB) were still negotiating a new tenancy agreement right up until the tenants were served with documents for this hearing. If a

new tenancy agreement had been negotiated by the parties, the tenant would guarantee it again just as she would with the hydro company.

#### SUBMISSIONS OF THE LANDLORDS' AGENT:

Section 44 of the *Residential Tenancy Act* specifies that a tenancy ends if the parties agree to end it, which is the basis of the landlord's application. If a tenant moves out, that does not absolve that tenant from any responsibility unless a new tenancy agreement is entered into that does not name that person. If there is no new tenancy agreement, that tenant continues to be responsible for everything that happens in the rental unit.

#### SUBMISSIONS OF THE TENANTS' AGENT:

The tenancy agreement names 3 tenants, and one moved out in July, 2021 and another was a guarantor and never did reside in the rental unit. The tenant who has remained in the rental unit paid the rent. The landlord attempted to renegotiate a lease with the remaining tenant but was not getting what he wanted so got the other tenant to sign the Mutual Agreement to End Tenancy.

#### Analysis

I agree that in the normal course of things, where 1 tenant signs a Mutual Agreement to End Tenancy, the tenancy ends for all tenants. However, where that is done without the knowledge of another tenant, it seems underhanded.

However, where a landlord wishes to take possession of a rental unit, the landlord must make it clear to a tenant that any rent money received after the effective date of a notice to end the tenancy or, in this case a Mutual Agreement to End Tenancy, is being accepted for use and occupancy only and does not serve to reinstate the tenancy. The tenant testified that rent was paid by e-transfer for September, 2021 through February, 2022 and has received no such indication by the landlord. That testimony was not disputed by the landlord's agent, and I find that by continuing to accept rent for 6 months after the effective date of the Mutual Agreement to End Tenancy, the landlord has reinstated the tenancy.

The landlord's application is dismissed and the tenancy continues.

Conclusion

For the reasons set out above, the landlords' application is hereby 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: January 28, 2022

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Residential Tenancy Branch