



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      OLC, FFT  
                             CNC, OLC, FFT

### Introduction

This hearing convened as a result of two applications filed by the Tenant. In both applications the Tenant sought an Order that the Landlords comply with the *Residential Tenancy Act* (the “Act”), the *Residential Tenancy Regulation* and/or the residential tenancy agreement as well as recovery of the filing fee. In the Tenant’s application filed on August 4, 2023, she also sought to cancel a 1 Month Notice to End Tenancy for Cause issued on August 2, 2023.

The hearing of the Tenant’s Application was scheduled for teleconference at 11:00 a.m. on November 7, 2023. Both parties called into the hearing. The Tenant called in on her own behalf and was assisted by an Advocate, C.B. Both Landlords called in. Those in attendance were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties’ respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Landlords be Ordered to comply with the *Act*, the *Residential Tenancy Regulation* and/or the residential tenancy agreement?
2. Should the Notice be cancelled?
3. If the Notice is upheld, are the Landlords entitled to an order of Possession?
4. Should the Tenant recover the filing fees paid for her two separate applications?

Background and Evidence

This tenancy began April 12, 2017. The Tenant pays \$750.00 in rent and paid a \$375.00 security deposit.

The rental unit is a single-family dwelling located on a 2.5 acre lot which includes a total of four homes. The rental unit is located at the front of the lot near the road.

The issue given rise to the Tenant's applications relates to the storage of a camper on the rental property. The Landlords believe this is a breach of a material term of the tenancy such that the tenancy should end. The Tenant argues that she has had the camper on the property since the beginning of her tenancy such that she should be able to continue to store it on the property. Both parties provided testimony and evidence with respect to this issue.

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlords presented their evidence first.

910120875 and 910121649 notes from Nov 7 11 am hearing

The Landlord, P.H. testified as follows:

- In terms of the alleged breach of a material term of the tenancy, the Landlords rely on paragraph 13 which reads as follows:

13. VEHICLES

The Tenant agrees not to store any items, including derelict or unlicensed vehicles, etc., on the outdoor portions of the rental premises without the written permission of the Property Manager.

The Tenant agrees not to engage in the repair, service, restoration etc., of any motor vehicle, boat motorcycle, etc.

[copied directly from the tenancy agreement for clarity]

- The Landlords say that the Tenant has stored numerous items on the rental property without the landlord's consent, including most recently, a Buick car and a camper.
- In the spring of 2022, the Landlords raised the issue of the Buick car as it was there for six months. At first the Tenant said it was a friend's car, and they waited through the winter.
- The Tenant was warned in writing about breaching the rental agreement in June 30, 2023 and she was given a month to remove the Buick car and camper.
- In early July 2023 the Buick car was towed away to the wrecker. The Landlords were very pleased about this but had hoped she would deal with the camper as well.
- The Landlord testified that when the Tenant first arrived she had a green Chevy blazer. The Landlords agreed to this vehicle on the rental property.
- When the Tenant was signing a lease she asked if she could store a boat and trailer that her son was gifted from his grandfather. The Landlords also agreed.
- Then the camper came and the beige car. The Landlords say they never agreed to either.
- The Landlord said that her son's grey truck was also agreed to as it was a necessity as he aged and got his own vehicle.
- Then there was a white car on the property. When they asked her, she said it was hers as it became her permanent car. The Landlords agreed to the white car being on the property.
- During Covid the Landlords tried to talk to her about the camper but they could not evict her.
- The Landlords also believe the camper may be illegal given its GVW.
- The Landlord denied giving the tenant permission to have the camper on the property in December of 2017 and says they have been asking her to move it since it first arrived.
- The Landlord stated that she did not try to end the tenancy six years ago because they were trying to be fair and reasonable. They were trying to understand and help her get on her feet with her young son.

- The Landlords concern is that the camper never leaves, it is covered with a tarp and is never used. When the Landlords asked her why she had it, she responded “its my livelihood”. The Landlords claim they have no idea what that means.

In response the Tenant testified as follows:

- She stated that she had permission from the Landlord in December 15, 2017 to store the camper on the property. The Landlords told her where to put it and she has parked it where the Landlord asked.
- She confirmed she does not use the camper for camping, but uses it for processing food from hunting, fishing and gardening as she uses it for canning. This reduces her expenses and provides her with additional income.
- She has shown the Landlord the inside the camper and informed them that she uses the camper for food preparation.
- She stated that everything is functional in the camper, the heater, the stove, etc. It is also licensed and insured.
- The Tenant stated that the Landlords never said anything about the camper until they moved into their new house approximately 1.5 years ago. The Landlords were living in the main house on the property when the Tenant first moved in. They started to renovate the house and they moved into the back property while they were renovating and that's when the issue arose because they can see the camper.
- The Tenant stated that the only issue is the camper as all other vehicles have been removed as requested by the Landlords.

### Analysis

The Landlords seek to end this tenancy for cause pursuant to section 47(h) of the Act which reads as follows:

**47** (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:  
...(h)the tenant

- (i)has failed to comply with a material term, and
- (ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

In this respect, the Landlords rely on paragraph 13 of the tenancy agreement which prohibits the Tenant from storing any items on the rental property without the Landlords' *written* consent.

The evidence before me indicates that at various times during this nearly seven year tenancy the Tenant and her son have had different vehicles on the property, a boat and trailer, as well as a camper. The evidence further indicates the Tenant has had discussions with the Landlords regarding those vehicles and the Landlord has agreed to their presence on the rental property.

The items giving rise to the Notice include a beige Buick car and a camper. At the time of the hearing only the camper remained. The evidence confirms that the Landlords sent the Tenant written notice on June 30, 2023 that the Buick car and camper had to be removed. The evidence further confirms the Buick car was removed in early July 2023. The camper remains.

The Landlords argue that by leaving the camper on the rental property, and failing to remove it after being given written notice to do so, the Tenant has breached a material term of her tenancy and the tenancy should.

Guidance can be found in *Residential Tenancy Policy Guideline 8—Unconscionable and Material Terms* which provides as follows:

### **Material Terms**

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach.

It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;

- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

As noted in the *Guidelines*, having a clause designated as a material term in a tenancy agreement is not conclusive.

The evidence suggests the parties have had numerous conversations over the years regarding the Tenant's vehicles. The Landlords concede that they have agreed to various vehicles being on the property provided those vehicles are used by the Tenant or her son as their primary vehicle. The Landlords also agreed the Tenant's son could store a boat and trailer he was gifted by his grandfather. There was nothing in evidence before me to suggest the Tenant obtained *written* permission from the Landlords for the storage/presence of those items as required by paragraph 13 of the tenancy agreement.

When the Landlords sent the Tenant a warning letter about the Buick car, the Tenant removed the car from the property.

The Tenant has refused the Landlords' demand that she move the camper. The parties agreed that the camper has been on the property since December 2017. The Tenant says she obtained the Landlords' permission at the time to store the camper and that she situated it on the property where they asked her to put it. The Landlords claim they have always had an issue with the camper and never gave the Tenant permission to store it there.

Had paragraph 13 been a material term of the tenancy, one would have expected the Landlords to ensure strict compliance and would have acted to end the tenancy in December of 2017 or early 2018 after the camper came to the rental property. In this case, I find it more likely the Landlords agreed to the Tenant storing the camper on the property.

That said, even in the event I had found clause 13 to be a material term of this tenancy agreement in terms of the Tenant requiring *written permission* of the Landlords to store

items, I would not end this tenancy for the reasons cited on the Notice. A landlord cannot consent, explicitly, or implicitly, with a breach of a material term and then use the breach as a grounds to end a tenancy. This is prohibited by the legal principle of *estoppel*.

The simplest meaning of *estoppel*, is that a person is prohibited from “going back on their word”. More formally, in a 2005 decision of the Supreme Court of Canada, *Ryan v. Moore*, 2005 2 S.C.R. 53, the court explained the issue of estoppel by convention as follows:

59 .... After having reviewed the jurisprudence in the United Kingdom and Canada as well as academic comments on the subject, I am of the view that the following criteria form the basis of the doctrine of estoppel by convention:

- (1) The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of *silence* (impliedly).
- (2) A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.
- (3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.

On balance, I find it more likely that the Landlords agreed to the Tenant storing her camper on the property in December 2017. The Tenant relied on this mutual assumption and did not seek *written* permission from the Landlords to have her camper on the property. I find that it would be unjust and unfair to allow the Landlords to rely on the strict terms of the tenancy agreement as a means to end this tenancy.

I find that the Landlords are estopped from relying on the strict wording of the tenancy agreement as it relates to the storage of the Tenant's camper and as such I grant the Tenants' application to cancel the Notice. The tenancy shall continue until ended in accordance with the *Act*.

To reduce future conflict between the parties and to provide clarity, I also make the following Orders, pursuant to section 62(3) of the Act:

1. The Tenant shall be permitted to store her camper on the rental property in its current location or in another location specifically agreed to by the Landlords *in writing*. The parties are encouraged to discuss a mutually agreeable location for the camper. Should the parties agree to move the camper, they shall evidence this agreement in writing.
2. The Tenant shall be permitted to store a personal vehicle, as well as a vehicle for her son (should he reside with her) on the rental property. Those vehicles must be in working order and must be insured.
3. Should the Tenant wish to bring another vehicle, boat, trailer, recreational vehicle, or other large item on the rental property the Tenant shall obtain the Landlord's *written* consent *prior* to moving the item onto the rental property.
4. Subject to the above, paragraph 13 of the tenancy agreement shall remain in full force and effect. Should the Tenant breach paragraph 13 of the tenancy agreement the Landlord may issue a further notice to End tenancy for Cause.

Having been successful in her applications I authorize the Tenant, pursuant to section 72 of the *Act*, to reduce her next months' rent by \$200.00 representing recovery of the two filing fees paid to the Residential Tenancy Branch.

### Conclusion

The Tenant's request for an Order canceling the Notice is granted. The tenancy shall continue until ended in accordance with the Act.

The Tenant's request for an Order that the Landlords comply with the Act, the Regulations and the tenancy agreement is granted. Section 13 of the tenancy agreement shall remain in force and effect subject to the specific Orders contained in this my Decision.

The Tenant's request to recover the filing fees is granted. She may reduce her next months rent by \$200.00.



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 06, 2023

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Residential Tenancy Branch