



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNL, OPT, 0

### Introduction

The hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy, for an Order of Possession for the rental unit, and for "Other".

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

### Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy that was served by the Landlord should be set aside and whether the Tenant should be granted an Order of Possession for the rental unit.

### Background and Evidence

The Landlord and the Tenant agree that the parties entered into a written tenancy agreement for a fixed term for the period between April 01, 2010 and March 30, 2011, which required the Tenant to pay monthly rent of \$2,100.00.

A copy of the tenancy agreement and an addendum to the contract that outlines additional terms were submitted in evidence. The Landlord and the Tenant agree that one of the additional terms was that the Tenant had "two one year options to renew at the same terms". The Tenant contends that since the tenancy agreement did not specify how the fixed term of the tenancy agreement would be renewed the fixed term of the tenancy would be automatically renewed unless the tenant did not give notice to vacate.

The Tenant stated that he had a telephone conversation with the Landlord in March of 2011, at which time she asked him to supply her with twelve post-dated cheques and that he supplied those cheques in March of 2011, which he contends is a clear indication that he wished to renew the fixed term of the tenancy for another twelve months.

The Landlord stated that she does not currently live in British Columbia and she typically asks her tenants for post dated cheques even when they have a month-to-month tenancy. She stated that she did not interpret the Tenant's compliance with her request to be an indication that he intended to renew the fixed term of the tenancy agreement.

The Landlord and the Tenant agree that the parties did not discuss renewing the fixed term of the tenancy when they spoke in March of 2011 and that the issue was not raised until after the Tenant had been served with a Notice to End Tenancy.

The Landlord and the Tenant agree that on June 03, 2011 the Tenant advised the Landlord, via email, that he believed they had a fixed term tenancy agreement that ended on March 31, 2012.

The Tenant argued that his actions during this tenancy, specifically his concern about selecting an appropriate tenant for the basement rental unit, his concern for maintenance of the premises, and his references to the rental unit being his home, was a clear indication that the Tenant intended to remain in the rental unit for an extended period.

The Landlord and the Tenant agree that in June of 2011 the Landlord served the Tenant with a Notice to End Tenancy for Landlord's Use of Property, which declared that the Tenant must vacate the rental unit by August 31, 2011. The reason for ending the tenancy cited on the Notice was that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse.

The Landlord stated that she is moving back to British Columbia and she intends to reside in the rental unit with her two young children. She stated that she is currently on a leave of absence from her employment in British Columbia and, for personal reasons, she has elected to return to British Columbia in September. The Landlord submitted documentation that corroborates her testimony that she is currently on a leave of absence from her place of employment. The documentation, which is dated April 07, 2008, indicates that she is scheduled to return to work on January 16, 2012. There is nothing in the documentation that would indicate that she cannot elect to return to work prior to January 16, 2012.

The Tenant presented no evidence to suggest that the Landlord does not intend to move back into the rental unit.

### Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the Tenant entered into a fixed term tenancy agreement that was to start on April 01, 2010 and end on March 30, 2011, and that the Tenant had “two one year options to renew at the same terms”.

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, the landlord and the tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Black's Law Dictionary defines “option” as the right of election to exercise a privilege. In my view the Tenant had an obligation to exercise his right to renew the fixed term of the tenancy agreement by clearly informing the Landlord of his intent to enter into a new fixed term. I find that the Tenant submitted insufficient evidence to establish that the parties renewed the fixed term of the tenancy agreement prior to March 30, 2011.

In making this determination I was heavily influenced by the undisputed evidence that prior to the fixed term of this tenancy ending on March 30, 2011 neither the Landlord nor the Tenant specifically discussed renewing the fixed term.

I considered the Tenant's argument that the Landlord was, or should have been aware, of his intent to remain in the rental unit for another year when he provided her with twelve post-dated rent cheques. While providing a landlord with post dated rent cheques certainly indicates intent to remain in a rental unit for an extended period of time, it does not obligate either party to continue with the tenancy for a fixed term. Tenants with periodic tenancies frequently provide landlords with post-dated cheques and this does not prevent either party from ending the tenancy in accordance with the *Act*. In my view, providing the Landlord with post dated cheques in these circumstances did not clearly convey the Tenant's intent to renew the fixed term of this tenancy agreement.

As I cannot conclude that the parties renewed the fixed term of their tenancy agreement when it expired on March 31, 2011, I find that the tenancy reverted to a month to month tenancy on April 01, 2011, pursuant to section 44(3) of the *Act*.

I accept that on June 03, 2011 the Tenant informed the Landlord of his belief that they had entered into a second fixed term that would end on March 31, 2012. Had this communication been sent to the Landlord prior to the end of the fixed term tenancy on March 31, 2011, I would have accepted this as proper notice that the Tenant intended to exercise his right to renew all of the terms of the tenancy agreement.

I have considered whether the addendum to the tenancy agreement gave the Tenant the right to renew the fixed term of the tenancy on June 03, 2011 after it had reverted to a month to month tenancy.

Sections 6(3)(b) and 6(3)(c) of the *Act* stipulate that a term of a tenancy agreement is not enforceable if the term is unconscionable or if it is not expressed in a manner that clearly communicates the rights and obligations under it. In these circumstances the addendum does not specify when the Tenant must exercise his right to renew the terms of the tenancy agreement. In my view it is reasonably evident that the Tenant had the right to renew the fixed term of the tenancy agreement prior to the expiration of the initial term of the tenancy agreement.

Without a clearly expressed deadline, I find that extending this right past the end of the initial term of the tenancy agreement is unconscionable. I find it unreasonable and grossly unfair to the Landlord to conclude that the Tenant could exercise this right at any time. Such a finding would grant the Tenant the right to renew the fixed term of the tenancy after an extended month to month tenancy, and I cannot conclude that was the intention of either party when they entered into this agreement.

I have considered the Tenant's argument that his actions during this tenancy represented a clear indication that the Tenant intended to remain in the rental unit for an extended period. I find that this argument does not influence my decision in this matter. Month to month tenancies frequently continue for extended periods, in some cases for decades. I therefore cannot conclude that the Landlord knew, or should have known, that the Tenant had exercised his right to enter into a new fixed term for this tenancy simply because his actions indicated he wished to reside in the rental unit for an extended period. It is entirely possible that a reasonable person could interpret those actions to mean that the tenant wished to remain in the rental unit for an extend period but that the Tenant did not want the obligations associated to a fixed term tenancy agreement.

Section 49(4) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. In the circumstances before me, I find that the Tenant has submitted no evidence to refute the Landlord's claim that she intends to move into the rental unit. I therefore accept the Landlord's testimony that she intends to move into the rental unit and I find that she has the right to end this tenancy pursuant to section 49(4) of the *Act*.

### Conclusion

As I have determined that the Landlord has the right to end this tenancy, I dismiss the Tenant's application for an Order of Possession and I uphold the Notice to End Tenancy that was served on the Tenant. As the Notice to End Tenancy has been upheld, I dismiss the Tenant's application for an Order of Possession.

The Landlord and the Tenant are reminded of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

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: July 14, 2011.

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Residential Tenancy Branch