



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an order of possession based upon cause and to recover the filing fee.

The landlord's agents and tenant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, to make submissions to me and respond each to the other.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit and to recover the filing fee?

### Background and Evidence

Although the tenant has been a resident/tenant since March 1, 2007, this particular tenancy began on May 1, 2011, the tenancy agreement stated that the tenancy was for a fixed term of five months and was to end on September 30, 2011. The monthly rent is \$385.00 and the tenant paid a security deposit of \$172.50 on February 21, 2007.

Regarding the fixed term, section 5 of the tenancy agreement entered into evidence by the landlord stated:

#### **"RENTAL PERIOD AND TERMS OF THE TENANCY**

**The tenancy created by this agreement STARTS ON May 01 2011 and  
b. continues for a fixed term of 5 months ending Sep 30 2011"**

During the testimony, upon query, the landlord's agent could not point to the section in the tenancy agreement stating whether the tenancy, at the end of the fixed term, was to continue as a periodic tenancy, for another fixed term after that date or whether the tenant must vacate the rental unit on that date.

The landlord's agent testified, however, that the landlord was entitled to an order of possession based upon the language that the tenancy was to end on September 30, 2011, and based upon the landlord's letter of May 11, 2011, to the tenant regarding the end of the tenancy.

In response, the tenant stated that he wished to continue the tenancy and that the language in landlord's letter stating that he could terminate the tenancy agreement prior to September 30, 2011, with a one month written notice entitled him to cancel the provision referring to the fixed term.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 44 (1) (b) of the Residential Tenancy Act provides that a fixed term tenancy ends only if the tenancy agreement provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

Section 44 (3) states that if a tenancy agreement does not require the tenant to vacate the rental unit on that date specified as the end of the fixed term and the landlord and 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.

Additionally section 55 (2) states that a landlord may request an order of possession if the tenancy agreement is a fixed term tenancy agreement that provides the tenant will vacate the rental unit at the end of the fixed term.

Upon review of the tenancy agreement, I find the landlord failed to provide that the tenant must vacate the rental unit at the end of the fixed term as required under the Act.

Conclusion

I therefore find that the landlord is not entitled to an order of possession and **I dismiss their application, without leave to reapply.**

I also find that due to the provisions of section 44 (3) of the Act, this tenancy has been renewed and I **order** that it continue on a **month to month basis.**

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 20, 2011.

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Residential Tenancy Branch