



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord: O FF  
For the tenant: OLC RP

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for other and provided details of “other” by requesting an order of possession based on the end of the tenancy agreement, and to recover the filing fee.

The tenant applied to for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to make repairs to the unit, site or property.

The tenant, the landlord and an agent for the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. The parties confirmed that they were served with the evidence package from the other party and had the opportunity to review the evidence prior to the hearing.

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.

### Preliminary and Procedural Matters

At the start of the hearing, the tenant was advised that his application would not be heard as his application did not specify the details of his dispute. The tenant submitted evidence; however, an applicant cannot make a claim through the submission of evidence. Evidence is submitted to support the application details. The tenant failed to specify the details of his claim. For this reason, and in accordance with section 59 of the

**Act, I dismiss the tenant's application with leave to reapply.** The tenant is reminded to provide the details of his claim and may include any additional pages to set out the details of his dispute in his application, as required. As a result of the above, the hearing proceeded with the consideration of the merits of the landlord's application.

### Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?

### Background and Evidence

The parties agree that the tenancy began on November 1, 2011. Monthly rent was initially \$550.00 per month, however was reduced in January 2012 to \$530.00 per month. A security deposit of \$275.00 was paid by the tenant at the start of the tenancy.

The landlord stated the tenancy was a fixed term tenancy that ended on November 1, 2012. The tenant disputed the landlord's testimony. The parties submitted copies of a written tenancy agreement signed on October 14, 2011 and another document signed on January 12, 2012.

In the tenancy agreement dated October 14, 2011, line #6 indicates:

"...The tenant is required to rent the place for minimum for 12 months; otherwise, the deposit will not be returned to the tenant..."

[reproduced as written]

In the document signed subsequently on January 12, 2012, the landlord made reference to the following paragraph that indicates:

"The landlord has the absolute power or right to accept or reject the new contract or agreement after the current contract end, which means the tenant, must move out by the end of the contract if the landlord decides not to renew the contract or agreement."

[reproduced as written]

The landlord stated that based on the above, the tenant should have moved out on November 1, 2012 as the landlord did not approve a new tenancy agreement, and is seeking an order of possession as a result. The tenant feels that the landlord should have issued a proper notice under the *Act* to end the tenancy.

The agent for the landlord stated that the landlord wishes to take over the rental unit for family use and may issue a 2 Month Notice to End Tenancy as a result. The tenant stated he is “fine” with that, as he would be entitled to the equivalent of one month’s rent as compensation. To date, no such a notice has been served on the tenant. The agent for the landlord stated that the landlord may also serve the tenant with a 1 Month Notice to End Tenancy for Cause.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 44 of the *Act* describes how a tenancy ends and states:

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

**(b) 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;**

- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

(3) 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 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.**

[emphasis added]

**I find** that neither the October 14, 2011 tenancy agreement nor the January 12, 2012 subsequent document specified an end date to the tenancy. For the tenancy to end, the landlord should have specified a date in the tenancy agreement. In addition, both parties should have initialed the date so it was clear to both parties the date the tenancy was ending. Pursuant to section 44(3) of the *Act* indicated above, **I find** that the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

**Order of possession** – As the landlord has not issued a Notice to End Tenancy, and given my finding above that the tenancy was deemed to have been renewed as a month to month tenancy after October 2012, **I do not** grant the landlord an order of possession and **dismiss** the landlord's application. Given the above, **I order** the tenancy to continue until ended in accordance with the *Act*.

As the landlord's application did not have merit, **I do not** grant the landlord the recovery of the filing fee.

### Conclusion

I dismiss the landlord's application in full.

The tenant's application is dismissed with leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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, 2012

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Residential Tenancy Branch