



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SANFORD HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **Decision**

### **Dispute Codes:**

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### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order of Possession ending the tenancy based on a term in the tenancy agreement stating that the fixed-term tenancy expires on March 31, 2014.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on April 10, 2014, the respondent did not appear and the hearing was therefore conducted in the respondent's absence..

### **Issue(s) to be Decided**

- Is the landlord entitled to an Order of Possession based on the fixed term in the tenancy agreement?

### **Background and Evidence**

The landlord testified that the tenancy began on November 1, 2013 for a fixed term ending on March 31, 2014. The landlord testified that the contract signed by the parties indicated that the tenant was to vacate at the end of the expiry of the fixed term. A copy of the agreement was in evidence.

In paragraph 2 the tenancy agreement in evidence shows that the tenancy is for a fixed length of time expiring on March 31, 2014. The provision in the agreement goes on to state:

*"At the end of this length of time: (please check option a, b, or c):*

- a) the tenancy may continue on a month-to-month basis; or*
- b) the tenancy may continue for another fixed length of time; or*
- c) the tenancy ends and the tenant must move out of the residential premises.*

The landlord had placed a mark beside both paragraph “a)” indicating that the tenancy may continue on a month-to-month basis and paragraph “c)” indicating that the tenancy will end and the tenant must move out.

The landlord stated that they believe that the agreed-upon term under paragraph 2 c) would apply at the landlord’s option and the tenant was therefore obligated to vacate effective March 31, 2014. The landlord had sent the tenant a letter stating that the tenancy was coming to an end.

The landlord’s position is that paragraph 2(c) was applicable, despite the fact that the agreement indicates both options “a)” and “c)” apply to the tenancy. The landlord is seeking an Order of Possession based on this term of the tenancy agreement.

### **Analysis**

Section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect. I find that the Act prevails over a tenancy agreement term.

In regard to the term in the tenancy agreement dealing with whether or not the tenant must vacate at the end of the fixed term, I find under section 13 (2)(f)(iii)(B) of the Act there are only two options for a fixed term: Either the tenancy terminates at the end of the fixed term and the tenant must then vacate OR; the tenancy automatically continues on a month to month basis.

Moreover, I find that section 6(3) of the Act states that a term of a tenancy agreement is **not enforceable** if:

- a) the term is inconsistent with the Act or the regulations,
- b) the term is unconscionable, or
- c) *the term is not expressed in a manner that clearly communicates the rights and obligations under it.* (My emphasis).

I find that contradictory terms marked by the landlord are *not expressed in a manner that clearly communicates the rights and obligations under the term.* Therefore I find as a fact that the duration of this tenancy is not limited by a valid and enforceable term in the tenancy agreement. Thus I find that the tenancy would automatically continue as a month-to-month tenancy beyond the date of the purported expiry date.

Accordingly, and the landlord is not entitled to an Order of Possession based on an expiry of the fixed term tenancy agreement. I find that the landlord's application must therefore be dismissed.

**Conclusion**

The landlord is not successful in the application seeking to terminate the tenancy based on alleged expiry of the fixed term.

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: May 26, 2014

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Residential Tenancy Branch

