



# 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:**

O, CNR

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord seeking to end the tenancy based on a term in the tenancy agreement stating that the fixed-term tenancy expires on March 31, 2014. The application is also to deal with an application by the tenant seeking to cancel a Ten Day Notice to End Tenancy for Unpaid Rent dated April 17, 2014.

The landlord was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on April 25, 2014 by the landlord and despite filing their own cross application scheduled to be heard today, the tenant did not appear at the hearing.. Accordingly, the tenant's application seeking to cancel the 10-Day Notice to End Tenancy for Unpaid Rent must therefore be dismissed.

### **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 that was supposed to end 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 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 also beside paragraph “c)” indicating that the tenancy will end and the tenant must move out.

The landlord felt that the agreed-upon term under paragraph 2 c) would apply at the landlord’s option and the tenant should have been obligated to vacate effective March 31, 2014, 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 the terms 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: 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).

Because the two conflicting terms in this tenancy agreement defining the specific nature of the fixed term contradict one another, I find that Section 6(3)(c) applies in this case. I find as a fact that this tenancy is not bound by a valid enforceable fixed term clause.

I find that, under the Act, the tenancy would automatically continue as a month-to-month tenancy beyond the purported expiry date of the fixed term.

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

I hereby dismiss both the tenant's application seeking to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated April 17, 2014 and the landlord's application seeking to end the tenancy based on alleged expiry of a fixed term.

After it was determined that the tenant's application to cancel the 10-Day Notice must be dismissed because the tenant failed to attend, the landlord made a request for an order of possession under section 55 of the Act.

Under the provisions of section 55(1)(a), when the tenant's application to cancel a Notice to End Tenancy is dismissed, I must issue an order of possession upon the request of a Landlord,. Accordingly, I hereby grant the Landlord an Order of Possession effective two days after service.

The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order.

I order that the remainder of the landlord's application be dismissed, including the request for reimbursement of the cost of filing.

### **Conclusion**

Both the landlord and the tenant are not successful in their respective applications but the landlord is still granted an Order of Possession on request under section 55(1)(a) of the Act based on the dismissal of the tenant's application.

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

