



# 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      OPB O

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for "other" and based on the details of "other" it appears the intent of the landlord's application was for an order of possession based on the tenant breaching a fixed term tenancy agreement.

Two agents for the landlord (the "agents") attended the teleconference hearing. During the hearing the agents were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") and Application for Dispute Resolution (the "Application") were considered. The agents testified that the Notice of Hearing and Application were served on the tenant by registered mail on April 10, 2014. The agents provided a registered mail tracking number as evidence and confirmed that the name and address matched the name of the tenant and the rental unit address and that tenant continues to occupy the rental unit. The agents stated that the documentary evidence was served on the tenant on May 13, 2014 by registered mail and a second tracking number was provided in evidence. The agents stated that neither registered mail package was returned to the landlord. Documents sent by registered mail are deemed served five days after mailing under the *Act*. Based on the above, I find the tenant was deemed served on the fifth day after April 10, 2014 with the Notice of Hearing and Application and after May 13, 2014 for the documentary evidence, in accordance with the *Act*.

### Issue to be Decided

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

### Preliminary and Procedural Matters

I find that the landlord's details of dispute are clear enough to justify an amendment to the landlord's application from code "O" (for "other") to code "OPB" which is a landlord request for an order of possession based on the tenant breaching a tenancy agreement, in this case an alleged fixed term tenancy agreement. Pursuant to section 64(3)(c) of the *Act*, I have added code "OPB" to the landlord's application.

### Background and Evidence

A copy of the written tenancy agreement was submitted in evidence. The tenancy agreement indicates in section 2 that the tenancy is a fixed term tenancy agreement from November 1, 2013 and ending on March 31, 2014, however, indicates that both (a) and (c) below apply to this tenancy agreement as follows:

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

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

[reproduced as written]

I note that neither party has initialled section 2(c) referred to above in the written tenancy agreement and that the tenancy agreement indicates "check option a, b or c" not choose multiple items below. Agent "GB" testified that he is seeking an order of possession based on the fixed term tenancy agreement ending on March 31, 2014 and that the tenant continues to occupy the rental unit. Agent "GB" referred to two letters submitted in evidence that indicate that the tenant was reminded by the landlord that the tenancy agreement was a fixed term tenancy agreement.

### Analysis

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

**Order of possession** – The landlord submitted a copy of a tenancy agreement where the fixed term condition as written in section 2 is confusing and contradictory. Both section 2(a) and 2(c) are filled in on the tenancy agreement submitted in evidence, and the parties failed to initial section 2(c) that requires the tenant to vacate the rental unit on March 31, 2014.

Therefore, based on condition 2 of the tenancy agreement being confusing and contradictory by having both 2(a) and 2(c) filled in, I find that the tenancy agreement reverted to a periodic, month to month tenancy after March 31, 2014 pursuant to section 6(3)(c) of the *Act*. Section 6(3)(c) of the *Act* states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

As a result of the above, I find the tenant has not breached a fixed term tenancy agreement as the tenancy agreement reverted to a periodic, month to month tenancy after March 31, 2014. Taking into account that the application before me does not include an application for an order of possession based on a Notice to End Tenancy, I dismiss the landlord's application, without leave to reapply. The tenancy continues until ended in accordance with the *Act*.

### Conclusion

The landlord's application for an order of possession based on the tenant breaching a fixed term tenancy agreement is dismissed, without leave to reapply.

The tenancy continues until ended in accordance with the *Act*.

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: May 26, 2014

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Residential Tenancy Branch

