



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Realty Executives Eco-World  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

OPC, FF, O

### Introduction

This hearing was convened as a result of the tenant's successful application for review consideration of the Decision by the original Arbitrator dated December 23, 2014, in which the landlord's application for dispute resolution for an order of possession for the rental unit was granted. The order of possession was effective at 1:00 p.m. on December 31, 2014.

At the original hearing on December 23, 2014, the landlord's agent, representing the property management company representing the owner (hereafter "landlord") attended; however, the tenant did not.

The tenant applied for a review of that Decision based upon his contention that he was unable to attend the original hearing due to circumstances which were beyond his control and that he had new and relevant evidence that was not available at the time of the hearing on December 23, 2014.

The tenant was granted a new hearing on the landlord's application for dispute resolution in a Review Consideration Decision by another Arbitrator dated January 29, 2015, and the Decision and order of December 23, 2014 were suspended pending the outcome of this new hearing granted.

At this new hearing, the landlord attending the original hearing and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

At the beginning of the hearing, neither party raised issues regarding the service of the evidence, although the tenant submitted that he does not receive his mail due to landlord/owner interference.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter*-The landlord's application listed a dispute code, which indicated that their request for an order of possession for the rental unit was based upon a notice to end the tenancy for alleged cause. The details of the dispute in the landlord's application, however, clearly state that their request for the order of possession is also based upon the lease agreement, the terms for which require the tenant to vacate the rental unit at the end of the fixed term. The tenant's responsive evidence clearly relates to his contention that he does not have to vacate the rental unit based upon the terms of the tenancy agreement.

I therefore find it appropriate that the landlord's application be amended, pursuant to section 64(3)(c) of the Residential Tenancy Act (the "Act"), to include a request for an order of possession for the rental unit based upon an alleged breach of an agreement by the tenant.

#### Issue(s) to be Decided

Should the Decision of December 23, 2014, be varied, set aside, or confirmed?

#### Background and Evidence

The written tenancy agreement provided by both parties show that this tenancy began November 15, 2013, that monthly rent was \$1700, payable on the 1<sup>st</sup> day of the month, and that the tenant paid a security deposit of \$850.

The tenant disputed that monthly rent was \$1700, and instead, stated that monthly rent was \$1600.

The landlord submitted that they are entitled to an order of possession for the rental unit, as the tenancy agreement provides for a fixed term of 1 year, ending on October 31, 2014. Further the written tenancy agreement shows that both parties initialled the boxes requiring the tenant to vacate at the end of the fixed term.

#### *Tenant's response to the landlord's application-*

The tenant submitted that the monthly rent should be \$1600 as advertised, not \$1700, but that he was under duress when he signed the tenancy agreement, as he was ready to move in, and in the hours before he was to move in, the landlord stated they would not give him the keys that day unless he signed the tenancy agreement with the higher rent.

The tenant submitted that the landlord's application is invalid as they did not issue a notice to end the tenancy.

The tenant submitted that he was promised an extension of the fixed term for another year, or a renewable fixed term, if he paid rent 6 months in advance, which he did. The tenant submitted that the landlord's agent, who represents the owner, misrepresented the fact that he could not have a renewable fixed term. The tenant submitted that he would never sign or agree to rent a home for just one year, as his son goes to school in that area.

The tenant submitted that the written tenancy agreement is invalid as the fixed term indicated on the agreement states a 1 year fixed term, but that the dates of November 15, 2013 through October 31, 2014, is not a full year. The tenant further questioned whether his initials in the box indicating he must move out of the rental unit at the end of the fixed term were authentic.

The tenant submitted that the real reason the landlord wants an eviction is due to the fact the owner has sold the rental unit.

The tenant's additional relevant documentary evidence included a series of email communication between the tenant and the landlord's representatives, and copies two other dispute resolution Decisions, one dated November 25, 2014 and the other dated January 20, 2015.

#### *Landlord's rebuttal-*

The landlord denied that the owner sold the home, as they still live in the upper unit and have no plans to sell the home.

The landlord denied requiring the tenant to pay in advance and as a property management company, it is their policy to collect monthly rent.

The landlord denied that the parties agreed to monthly rent of \$1600 or that there was an agreement for a renewable fixed term. The landlord submitted further that the monthly rent payments by the tenant after October 31, 2014, have been accepted on a for use and occupancy basis, due to the impending dispute resolution proceedings taking place.

### *Previous Decisions-*

As to a Decision of November 25, 2014, as submitted into evidence by the tenant, a hearing on the tenant's application seeking, among other things, cancellation of the landlord's notices to end the tenancy and to allow the tenant to reduce the rent, occurred on November 25, 2014. In that Decision of the same date by another Arbitrator, the Arbitrator dismissed the portion of the tenant's application seeking cancellation of the landlord's notices to end the tenancy as none had been issued to the tenant.

As to the tenant's request for a reduction in rent to \$1600, the claim for \$1200 related to the tenant's contention that he had signed the tenancy agreement under duress and that monthly rent agreed upon was \$1600, not \$1700. The other Arbitrator dismissed the tenant's claim for the reduction in rent as the tenant failed to provide sufficient evidence to support this claim.

As to a Decision of January 20, 2015, a hearing was held on the same day to deal with the tenant's application seeking cancellation of the landlord's 1 Month Notice to End Tenancy for Cause. At that hearing, the landlord appeared; however, the tenant did not. Another Arbitrator dismissed the tenant's application, due to the tenant's failure to attend the hearing scheduled in response to his own application. The other Arbitrator also mentioned that the landlord had been granted an order of possession for the rental unit and the order remained enforceable.

The tenant filed an application for review consideration of the January 20, 2015, Decision, but in a Decision of February 17, 2015, yet another Arbitrator dismissed the tenant's application as it was not filed within the required timeframe as allowed under the Act.

### Analysis

Section 44(1)(b) of the Act states a tenancy ends if the tenancy agreement is a fixed term tenancy that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. In the case before me, whether or not the language in the written tenancy agreement, as provided by both parties, states that the tenancy term incorrectly stated 1 year, as opposed to 11 ½ months, the clear language specified that the date the tenancy ended was October 31, 2014. The tenant and the landlord initialled the box by this term, as required on the signed written tenancy agreement.

I do not agree with the tenant that the parties agreed to a renewable fixed term, as his emails to the landlord indicated that this was his preference but the landlord's

responses clearly never agreed to this provision. I found the landlord's responses to be clear and consistent that the intention of the landlord/owner was a fixed term to end on October 31, 2014, which was verified by the tenant's signature on the written tenancy agreement.

I further find that the tenant has addressed his claim that he signed the written tenancy agreement under duress in his application heard on November 25, 2014, as another Arbitrator found that the tenant submitted insufficient evidence of this. Therefore I find the tenant's claim of duress had already been decided and I cannot re-decide this matter, as I am bound by this earlier Decision, under the legal principle of *res judicata*.

Due to the above, I find that by operation of the specified date ending the fixed term in the tenancy agreement, this tenancy ended on that date.

On this basis, I confirm the Decision and order of possession for the rental unit of the original Arbitrator, dated December 23, 2014, pursuant to section 82(3) of the Act, and the order remains valid and enforceable

#### Conclusion

The original Decision of December 23, 2014, granting the landlord an order of possession for the rental unit effective December 31, 2014, at 1:00 p.m. is confirmed and it remains valid and enforceable.

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: February 19, 2015

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Residential Tenancy Branch