



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, O

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on February 26, 2015 for the Landlords to comply with the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement. The Tenant also applied for ‘Other’ issues as detailed below.

The parties appeared for the hearing and provided affirmed testimony as well as written evidence in advance of the hearing. A legal advocate for the Tenant also appeared for the hearing and assisted the Tenant in making submissions.

The Landlords confirmed receipt of the Tenant’s Application by registered mail and both parties confirmed receipt of each other’s evidence prior to the hearing. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity during and at the conclusion of the hearing to present evidence, make submissions to me, and cross examine the other party on the evidence provided.

### Issues to be Decided

- Can the Landlord end the tenancy pursuant to Section 44(3) of the Act?
- Has the tenancy been re-instated?

### Evidence and Background

Both parties confirmed that this fixed term tenancy started on May 1, 2013 for a period of one year which expired on July 30, 2013. According to the written tenancy agreement, at the end of the fixed term the Tenant was required to vacate the rental unit. However, the Landlord accepted rent after the fixed term tenancy had ended and continues to do so at this moment in time.

The Tenant explained that the Landlord had sent her two letters one and a half years later in February 2015, advising that the tenancy was to be ended immediately because the Tenant had failed to move out at the end of the fixed term period in July 2013 as required by the tenancy agreement. The Tenant wanted the Landlord to comply with the Act because the Tenant has been paying rent since the fixed term ended and submitted that the tenancy should continue on a month to month basis.

The Landlords submitted in their written evidence that the Tenant was responsible for informing them that the tenancy was due to end in July 2013. Therefore, no tenancy agreement exists between the parties. As a result, the Tenant is required to now move out of the rental suite. In their written submissions, the Landlords also made allegations that the Tenant had threatened the Landlord during the tenancy. The Tenant's legal advocate denied this allegation and stated that it was centered on unpaid rent which had since been resolved.

The parties confirmed that no notice to end tenancy for cause had been issued to the Tenant. The Landlords were informed of the provisions of ending a tenancy as detailed below during the hearing. The Landlords were asked to respond or comment on these and no further comments were forthcoming from either Landlord.

### Analysis

Section 44 of the Act explains how a tenancy may end. Section 44(3) of the Act states that if on the date specified as the end of the fixed term tenancy agreement that does not require the tenant to vacate the rental unit, the landlord and tenant have not entered into a new agreement but are deemed to have renewed the tenancy on a month to month basis under the same terms.

In this case, while the parties entered into a fixed term tenancy agreement which **did** require the Tenant to vacate the rental unit, I find the Landlord continued to accept payment of rent without pursuing an end to the tenancy in accordance with the agreement. The responsibility to end such a fixed term tenancy agreement does not rest with one party but is a shared responsibility that the parties should have decide upon between themselves before the fixed term ended.

In this case, the Landlords provided no indication to the Tenant that they wanted the tenancy to end at the expiry of the fixed term and continued to take rent from the Tenant for a significant period of time thereafter. Neither did the Landlords explain to the Tenant that the rent monies were being accepted for use and occupancy only. Therefore, I find the tenancy in this case was re-instated after the fixed term ended and continued under

the same terms on a month to month basis. Therefore, the tenancy cannot be ended on the basis that it should have ended back in May 2013. The tenancy can now only be ended in accordance with the Act and the Landlords are ordered to comply with the above provisions accordingly.

In relation to the Landlord's allegations of threats made by the Tenant, the Landlord is at liberty to pursue remedies under the Act through a notice to end tenancy for cause, pursuant to Section 47 of the Act.

### Conclusion

The Tenant's Application is granted. The Landlord cannot end the tenancy based on a fixed term tenancy agreement which ended in July 2013 as the tenancy as been re-instated. The Landlords must comply with the provisions and remedies of the Act if they want to end the tenancy.

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 25, 2015

---

Residential Tenancy Branch

