



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62.

Both parties attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlord with her application for dispute resolution hearing package ("Application") on May 28, 2015. The tenant provided a Canada Post receipt and tracking number as proof of service with her Application. The landlord confirmed that he did not receive the tenant's Application because he was out of town and he advised the tenant about this. The landlord confirmed that he did not provide the tenant with another address for service while he was out of town. The landlord stated that he was notified of this hearing when he called the Residential Tenancy Branch ("RTB"). At the outset of the hearing, I read aloud the tenant's Application, including the details of dispute and a one-page letter submitted by the tenant. The landlord testified that he was prepared to proceed with the tenant's Application, despite the fact that he did not receive a copy of the tenant's Application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's Application on June 2, 2015, five days after its registered mailing. The tenant is required to send the Application by way of registered mail to the address at which the person resides or carries on business as a landlord, as per section 89(1)(c) of the *Act*. The tenant sent the Application to the landlord's address for service as listed in the tenancy agreement and the landlord did not provide any other address for service to the tenant.

The landlord confirmed that he submitted a copy of the written tenancy agreement, by way of facsimile, for this hearing. I had not yet received a copy of this facsimile at the time of this hearing. The tenant also provided a copy of the written tenancy agreement with her Application. As both parties have copies of the written tenancy agreement, I do not make a determination with respect to service of the landlord's written evidence upon the tenant.

### Issue to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

### Background and Evidence

Both parties agreed that this tenancy began on February 19, 2014 and that the tenant continues to reside in the rental unit. Monthly rent in the amount of \$1,600.00 is payable on the first day of each month. A security deposit of \$800.00 was paid by the tenant and the landlord continues to retain this deposit.

The written tenancy agreement, on a standard RTB form, indicates that this tenancy is for a fixed term ending on July 1, 2015, after which the tenancy ends and the tenant must move out of the residential unit. Both the tenant and landlord initialled the area beside that provision. The tenant stated that she did not read this provision carefully before signing.

The tenant stated that the landlord wanted her to stay for a fixed term of 5 years but that she did not want to commit to this long time frame so she verbally agreed with the landlord to renew the tenancy agreement on a yearly basis. The landlord stated that while he was initially prepared to renegotiate the tenancy agreement with the tenant at the end of the fixed term, he has decided to re-rent the unit to new tenants as of September 1, 2015. The landlord stated that this tenancy has ended and the tenant was required to vacate the rental unit by July 1, 2015, as per the tenancy agreement.

Both parties agreed that a notation was made by the landlord under the fixed term provision in the tenancy agreement, stating: "intention to do new contract @ same rent." The tenant stated that this notation takes precedence over the fixed term provision requiring her to vacate the rental unit. The landlord stated that this notation is not binding and does not take precedence over the fixed term provision.

The tenant seeks an order for the landlord to comply with the tenancy agreement in allowing her to renew her tenancy agreement and reside in the rental unit for another year after July 1, 2015.

### Analysis

Section 44(1)(b) states the following:

*(1) A tenancy ends only if one or more of the following applies:*

*...(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.*

The tenancy agreement in this situation requires the tenant to vacate the rental unit by July 1, 2015, the end of the fixed term period. Both parties signed the entire tenancy agreement and

specifically agreed to this fixed term provision by initialling beside it. Although a notation was made in the tenancy agreement, the landlord made this notation and neither party signed or initialled beside it. In any event, this notation is not a clear indication that this tenancy will continue after the fixed term, whether on a month-to-month or another fixed term basis. It simply states that there was an intention to negotiate a new contract at the same rent. The landlord has chosen not to negotiate a new contract.

Accordingly, I find that as per the terms of this fixed term tenancy agreement, this tenancy ended effective on July 1, 2015 and the tenant was required to vacate the rental unit at the end of the fixed term. The tenant's application for an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement, is dismissed without leave to reapply.

During the hearing, the landlord stated that since the tenant has paid rent in full for July 2015, he is agreeable to the tenant vacating the rental unit by July 31, 2015. During the hearing, I advised the landlord that if the tenant does not vacate the rental unit by July 31, 2015, as agreed by the landlord, the landlord may make an application for dispute resolution at the RTB to obtain an order of possession.

#### Conclusion

This tenancy ended effective on July 1, 2015.

The tenant's application for an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement, is dismissed without leave to reapply.

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: July 13, 2015

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Residential Tenancy Branch

