



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROCKLAND VILLAGE INVESTMENTS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPB, O, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for an Order of Possession pursuant to section 55 and the provisions of the *Act* regarding fixed term tenancies. As well, the landlord sought to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied to have the tenancy continue and for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement by protecting his right to privacy and quiet enjoyment.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other party's materials submitted and served in anticipation of this hearing.

### Issue(s) to be Decided

Is the tenancy at an end as a result of the conclusion of a fixed term?

Is the landlord entitled to an Order of Possession for the rental unit?

Is the tenant entitled to an order that the landlord protect his right to quiet enjoyment?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy began on June 1, 2015 with a rental amount of \$550.00 payable on the first of each month. The landlord testified that he continues to hold a \$275.00 security deposit paid by the tenant on June 15, 2015. The landlord sought an order of possession, claiming that the tenancy has come to an end and the tenant will not vacate the rental unit. The landlord claims, and refers to the residential tenancy agreement to support his position, that the tenancy was agreed to for a fixed term of 3 months after

which the tenancy ends and the tenant must move out. The tenant testified that he will not vacate the rental unit, does not want the tenancy to end and believes he is within his authority to remain in the unit.

The landlord and tenant both submitted identical copies of the residential tenancy agreement in this matter. Page two of the agreement states that the tenancy is for a fixed length of time, specifically 3 months ending August 31, 2015. It provides the following details of the written agreement;

- The full names of both parties;
- The dates of the signing of the agreement as well as the effective dates of the agreement;
- The address of the rental unit;
- The contact information for the landlord;
- The signatures of both parties; and
- The details of the tenancy including the term of the tenancy, the rental amount, the security deposit amount and the services included.

The tenant testified that, at the outset of the tenancy, he entered into an oral agreement with the landlord to be allowed to stay on a month to month basis indefinitely. He testified that, at the time of meeting the landlord, he was told that there would be a “probation period” but he did not believe that this period could potentially lead to the end of his tenancy.

The landlord provided sworn affidavits from the property manager. Its contents include that;

- The tenant attended the residence with a social worker/support worker when coming to view the residence/rental unit;
- The tenant had no references to supply;
- The support worker indicated she would not be a reference for the tenant;
- Based on his lack of references, the tenant was offered a 3 month lease that would operate as a “probationary period”;
- That he conducted the move-in inspection with the tenant;
- That he went over the lease agreement with the tenant and had him sign it, marking an x in the box that stated, after 3 months the tenancy would end – he had the tenant initial; and
- That the tenant spent time reviewing the tenancy agreement before signing.

The social worker/support worker who was present when the tenant viewed and applied for a rental suite provided a sworn affidavit. She stated;

- She was present when the tenant visited the residential premises;
- When asked, she did not agree to act as a reference for the tenant;
- She heard and was present for the discussion of the details of the agreement;
- “My understanding of what was discussed and agreed was clear. [The landlord’s] prerogative as to whether the landlord would consider an extension beyond August 31 ... [The landlord] made it very clear it was for 3 months only.”

The tenant testified that the landlord should be held to their original position, as provided in his testimony. With respect to the signed tenancy agreement indicating a 3 month lease term, the tenant testified that the wrong box was checked, he didn’t read it carefully enough and, after all was complete, he asked the landlord to change it but they did not.

The tenant submitted that, despite the affidavits, letters and testimony from other tenants with respect to his behaviour, it is his privacy and quiet enjoyment of his home that are disrupted. He testified that he is bothered by the loud noise – stereos and other sounds at late hours; apartment sounds; and comings and goings of the neighbours. He also submits that he is now suffering excessive bother and stress at the hands of the landlord as they continually address him about leaving the premises.

### Analysis

There is no dispute between the parties that the written tenancy began agreement in this matter indicates a three month fixed term tenancy to end on August 31, 2015. Residential Tenancy Policy Guideline No. 30 provides direction on the definition and terms of a fixed term tenancy:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

Section 44 of the *Act* addresses how a tenancy ends, including a fixed term tenancy:

44 (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...

Policy Guideline No. 30 also indicates that, a landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. In accordance with the *Act* and the Policy Guidelines, the tenancy agreement signed by both parties in this matter states that,

... (add in fixed term description in lease).

***(emphasis added)***

The tenant submitted that he and the landlord orally contracted to ... He argued that the original oral agreement cannot be trumped by the written residential tenancy agreement. An oral agreement is difficult to prove. In this case, while the tenant provided sworn testimony that he received verbal assurances that the tenancy may continue, the landlord denies this agreement. Furthermore, the landlord submitted (at least 2) statutory declarations ("witness statements") that confirmed the landlord's position.

- Property Manager's statement indicating that he was present when the tenant was told of the fixed term of this tenancy and that he was present as the tenant carefully reviewed the residential tenancy agreement.
- Support Worker's statement indicating that she was present and believed that it was made clear that this tenancy would be for a fixed term.

The landlord's counsel submitted that, even if an oral agreement were to have been created, the written agreement signed and dated with all required information under the *Act* would supersede that agreement. The landlord's counsel refers to the "parol evidence rule" in law; there must be overwhelming and compelling evidence for an oral agreement to take precedence over a written agreement. According to the rules, when the written agreement is clear and unambiguous, it is the written agreement that prevails.

While the rules of evidence are not applied strictly to Dispute Resolution hearings, I find that this rule in law is helpful in these circumstances. The landlord's counsel submitted that, in this case, the written residential tenancy agreement is clear and unambiguous. Further, the counsel submitted that the tenant has not presented compelling or overwhelming evidence to support his version of events. In this case, I accept the testimony of the landlord and his witnesses. I also accept the submissions of the landlord's counsel in that I find the tenant has not provided proof that an oral agreement existed. To the contrary, the landlord provided proof that no such oral agreement existed and the written terms of the tenancy agreement were made clear to the tenant.

In this form of tenancy, a term is fixed for the assurance of both parties. With few exceptions, this tenancy will continue to the end of its term, allowing the tenants and landlords the security that comes with this fixed period of time. This form of tenancy also schedules an end or expiration date with the option to renew if both parties agree to set a new term for the tenancy. The landlord submitted that while it is possible that the tenant misunderstood the verbal comments on viewing the rental unit, it is less likely that the tenant did not read the residential tenancy agreement and all of the provisions of the agreement before he signed it. The residential tenancy agreement submitted by the tenant is undisputed evidence that the tenant signed a three month fixed term tenancy agreement with an expiration date of August 31, 2015.

In this case, the landlords have not agreed to renew this rental agreement. Pursuant to the legislation, if a tenant does not obtain written agreement to renew their lease from the landlord, the tenancy will end at the expiry date on the original agreement. When the tenants and landlord signed the rental agreement for a term of three months, both parties agreed in writing to all the terms within that agreement (as long as those terms are in compliance with the *Act*).

The tenant argued, in his submissions, that allowing the landlord to end his tenancy without cause would be a miscarriage of justice and references section 6(3)(b) of the *Act* that states,

A term of a tenancy agreement is not enforceable if the term is unconscionable.

From the tenant's testimony and submissions, I understand him to mean that finding that this tenancy was indeed agreed upon for a fixed term would be paramount to an unconscionable term of his tenancy agreement.

It is quite usual that a residential tenancy agreement be set for a fixed term. There is a variety of provisions for fixed term tenancies within the *Act*. The *Act* does not provide any limit to the length of a fixed term or allow for many alterations or changes to a fixed term tenancy for the reasons stated above: it is an assurance to both parties as to the specific details of the tenancy. It is not considered unconscionable under the *Residential Tenancy Act* to provide a fixed start and end date to a tenancy in a variety of circumstances.

The tenant also submitted that he had signed a 3 month fixed term tenancy agreement under some coercion or duress. I do not find that this is the case. The tenant provided no evidence to support this claim. I find that the tenant, who made articulate submissions regarding the *Act* at this hearing, made an informed decision to sign the written tenancy agreement, thereby agreeing to its terms.

The tenant also applied for a remedy in the form of an order that the landlord effectively protect his right to privacy and quiet enjoyment. Since I find that the tenancy will come to an end on August 31, 2015, I do not need to determine whether the tenant should be granted such an order. However, I do note that the tenant provided little to no evidence that he had been unreasonably disrupted by his neighbours and that this claim of disturbance was disputed by the landlord with evidence to the contrary. I dismiss the tenant's application for an order to the landlord.

I dismiss the tenant's application dispute the end of the tenancy and finding that the tenancy ends as of August 31, 2015. At the request of the landlord and in all of the circumstances, I will provide the landlord with an Order of Possession for this date.

As the landlord has been successful in this application, I find that he is entitled to recover the filing fee for this application.

### Conclusion

To ensure this tenancy ends in accordance with the residential tenancy agreement, I grant an Order of Possession to the landlord dated August 31, 2015.

I dismiss the tenant's application in its entirety.

I allow the landlord to retain \$50.00 for the filing fee of this application from the tenant's \$275.00 security deposit, reducing the security deposit to \$225.00.

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: August 24, 2015

---

Residential Tenancy Branch

