



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OLC, FF**

### Introduction

This hearing was scheduled in response to the tenant's application for dispute resolution requesting an Order the landlord comply with the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

### Preliminary Matters

The tenant said he did not receive the landlord's evidence that had been sent via express post to the tenants' postal box number on September 8, 2015. The landlord had evidence before him that the mail had been accepted on September 10, 2015; a signature confirming the name of the person who retrieved the mail was not obtained.

The tenant was informed that the landlords' evidence contained copies of tenancy agreements that included the tenants' signature and initials. The tenant confirmed that the tenancy agreements supplied by the landlord could be referenced during the hearing. The parties were told if there was any dispute in relation to these documents I would request copies of the original documents.

### Issue(s) to be Decided

Has the tenancy ended as the result of a fixed term requiring vacant possession or is this tenancy a month-to-month term?

## Background and Evidence

There was no dispute that the parties signed a tenancy agreement, including a 38 clause, 3 page addendum. The initial tenancy agreement commenced July 26, 2014, for a six month term to January 26, 2015.

Page two, clause two of the standard Residential Tenancy Branch (RTB) tenancy agreement, setting out the length of the tenancy, was signed by the parties and included the tenants' initial next to section 2.b)ii) of the tenancy agreement:

*"if the tenancy ends and the tenant must move out of the residential unit...if you choose this option both the landlord and tenant must initial in the boxes to the right."*

Beneath this section of the clause the agreement has a black line with an arrow, pointing to the boxes that must be initialled; the landlord did not initial a box.

The three page addendum is initialled at the bottom of each page; it is dated on the first page. Clause 28 of the addendum references the fixed-term lease in relation to liquidated damages.

Clause 30 of the addendum provides:

*"Tenant and landlords agree that a new tenancy agreement must be in place two months before the existing lease expires or the tenants must vacate upon expiration of the current lease."*

There was no dispute that the initial tenancy agreement was set to expire effective January 26, 2015. There was also no dispute that at the very end of the initial fixed-term tenancy signed in July 2014 the parties reached an agreement to continue the tenancy. What is in dispute is whether the second tenancy was a fixed-term agreement requiring vacant possession at the end of the term or whether the term converted to month-to-month, allowing the tenant to remain in the rental unit beyond the end of the fixed-term.

The tenant said that he did not read the addendum he signed in July 2014. When the tenant signed the tenancy agreement on January 26, 2015, the day the tenancy was to end, the landlord reused the original tenancy agreement and addendum; new documents were not signed. On page two of the original tenancy agreement the landlord made a hand-written notation:

*"extension to July 26, 2015"*

The landlord and tenant initialled this notation. Clause two of the RTB tenancy agreement was not altered; the boxes referencing what would occur at the end of the fixed-term were not checked and neither party initialled the document in the section

setting out what should happen at the end of the fixed-term. The tenants' initials from the first tenancy remained.

On January 26, 2015 the tenant and landlord each initialled page one of the tenancy agreement addendum that was signed in July 2014. No additional initials were placed on the other two pages of the addendum.

The landlord said that they never sign month-to-month tenancy agreements and always require tenants to either sign a new tenancy agreement or to vacate the unit at the end of the term.

The landlord realized the tenant needed more time to vacate and offered to sign a third tenancy agreement with the tenant, commencing July 26, 2015, ending October 26, 2015. A copy of this tenancy agreement was supplied in the landlords' evidence.

The tenant said that when he looked at the tenancy agreement that commenced on July 26, 2015 and read the addendum he did not wish to sign the agreement. The tenant had been under the impression he did not have to vacate after the term of tenancy that commenced on January 26, 2015 came to an end. He was unsure if the tenancy should go month-to-month. The tenant said that the landlord decided to sign a new tenancy agreement with him on the day the first tenancy was ending; they did not do so at least two months prior to the end of the tenancy.

The landlord said that the addendum set out the terms of the agreement and clearly required the tenant to vacate the rental unit at the end of the fixed-term. The landlord confirmed that they did not sign a new tenancy agreement on January 26, 2015; they made notations on the original agreement.

When asked why the RTB tenancy agreement was not fully completed, as set out in clause two of page two, the landlord said that they were relying on clause 30 of the addendum. The landlord did not initial the section of page two of the tenancy agreement that set out what should happen at the end of the fixed term.

### Analysis

My assessment and finding is based on the evidence supplied by each party; through oral testimony and written submissions. I have also considered the legislation, Regulation and RTB policy.

The Residential Tenancy Act defines fixed term as meaning the date on which a tenancy ends.

The Act defines periodic tenancy as:

*(a) a tenancy on a weekly, monthly or other periodic basis under a tenancy agreement that continues until it is ended in accordance with this Act, and*

*(b) in relation to a fixed term tenancy agreement that does not provide that the tenant will vacate the rental unit at the end of the fixed term, a tenancy that arises under section 44 (3) [how a tenancy ends];*

(Emphasis added)

Section 44(3) of the Act provides:

*(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.*

I have considered the tenancy agreement signed by the parties and find that the documents contain inconsistencies. Page two; clause two, of the standard RTB tenancy agreement requires the landlord to check one of several boxes; indicating that the tenancy is either a month-to-month term or a fixed-term. The July 2014 tenancy agreement was completed with a term of six months, to January 26, 2015. As part of this term, clause two of the tenancy agreement also requires the landlord to select one of two boxes; i) indicates the tenancy will continue on a month-to-month term, and box ii) indicates that if the tenancy ends and the tenant must move the parties must both initial the corresponding box. The landlord did not initial this section of the agreement.

I have then considered the addendum signed by the parties and find that clause 30 of the addendum sets out what should happen at the end of tenancy. I find that clause 30 of the addendum is not consistent with the terms contained in clause two of the tenancy agreement. The landlord said that they relied on the addendum; however the Act requires terms to be expressed in a manner that is clear and not contradictory or vague.

Section 6(3) of the Act provides:

*3) A term of a tenancy agreement is not enforceable if*  
*(a) the term is inconsistent with this Act or the regulations,*  
*(b) the term is unconscionable, or*  
*(c) the term is not expressed in a manner that clearly communicates the rights and obligations under i*

I find the inconsistent clauses failed to clearly communicate the rights and obligations of the parties.

I find, pursuant to section 44(1)(f) of the Act that the original tenancy ended effective January 26, 2015. At this point I find that the parties entered into a tenancy agreement with a term ending July 26, 2015.

I find that the second tenancy agreement was silent as to what should occur at the end of the term. Section two of the agreement was not fully completed or altered from the original, the landlord did not initial the section that confirmed the tenant must vacate. As the parties initialled only the first page of the addendum that had been signed in 2014, I find that when the tenancy was renewed in January 2015 only the first page of the addendum was considered at the time of signing. The parties did not initial the other two pages of the addendum, leading me to find they were not considered at the time of renewal. There was no evidence before me that there was a meeting of the minds in relation to what should happen at the end of the term.

Therefore, in the absence of a new tenancy agreement that had consistent terms setting out what should happen at the end of the fixed-term, I find that the tenancy meets the definition of periodic tenancy and, pursuant to section 44(3) of the Act that it is now a month-to-month term.

The facts of the tenancy were in dispute and the tenant required a finding in relation to the terms of the tenancy. As the tenants' application has merit I find the tenant is entitled to recover the \$50.00 filing fee which may be deducted from the next months' rent.

### Conclusion

The tenancy is a month-to-month term.

The tenant is entitled to deduct the \$50.00 filing fee from the next months' rent.

This decision is final and binding 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: September 22, 2015

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Residential Tenancy Branch

