



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB

### Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession because the tenant has breached an agreement with the landlords.

The landlords, the tenant and Legal Counsel for the tenant attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession because the tenant has breached an agreement with them?

### Background and Evidence

The parties agreed that this tenancy started on April 01, 2015 with two co-tenants. The parties entered into a fixed term tenancy for five years which is due to expire on March 31, 2020. Rent for this unit is \$1,500.00 per month due on the first of each month. The tenants paid a security deposit of \$750.00 and a pet deposit of \$250.00.

The landlords testified that the tenants ended their relationship and in March, 2016 the female tenant vacated the rental unit. The male tenant continued to live there and pay rent. On June 07, 2016 the female tenant gave written notice to end her tenancy that stated that 'SC will be terminating this agreement as of June 08, 2016 due to the end of her relationship with MB and departure from the rental unit'.

The landlord testified that the female tenant SC also entered into a mutual agreement to end tenancy on June 07, 2016 with an effective date of June 14, 2016. The landlord testified that as the landlords and female tenant mutually agreed to end the tenancy then the tenancy should have ended on June 14, 2016 for both tenants; however, the male tenant has continued to reside in the unit. The landlord's testified that the male tenant does not agree that he has to vacate the rental unit and intends to continue with the five year lease agreement.

The landlords testified that as house prices have risen they now want to sell this property. The landlords seek an Order of Possession.

Legal Counsel for the tenant stated that the tenant's position is that the five year lease remains in place with the male tenant. The mutual agreement between the female tenant SC and the landlords was to release her from her obligations under the tenancy agreement and this agreement was struck without this tenant's consultation, knowledge or consent. Therefore, SC only ended her obligation to the tenancy and the fixed term lease should still remain as written but excluding the female tenant.

The tenant testified that the only reason the landlords want to end this agreement and tenancy is because they now want to sell the property because house prices have increased.

### Analysis

The landlord's argument is that because the female tenant signed a mutual agreement to end the tenancy and gave written notice to end the tenancy that this effectively ends the tenancy for both tenants. The tenant's argument is that the female tenant, in giving written notice and signing this mutual agreement did so to relieve her from the tenancy and any further obligations under the tenancy agreement.

Having giving both arguments due consideration I turn to Residential Tenancy Policy Guidelines 13 which explains the rights and responsibilities of co-tenants in a tenancy. In particular the policy guideline states:

"Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement."

[My emphasis underlined]

However, the policy guideline only explains the above provisions in relation to a periodic tenancy. In this case, the tenancy was not periodic in nature but a fixed term one. There is no guidance on how a fixed term tenancy must end when one tenant gives notice or a mutual agreement is signed. There was no appearance by the female tenant to dispute or deny the evidence before me. Therefore, I find that the evidence suggests that the intention and purpose of the parties to end the tenancy by mutual agreement was specifically to relieve the female tenant of her obligations under the tenancy agreement after she vacated the rental unit, rather than to end the tenancy for both co-tenants.

I find that the tenancy was ended without consultation or regard for the male tenant. Furthermore, I find the landlord continued to accept rent from the male tenant after the effective date of the mutual agreement and did not put the male tenant on notice that the rent was being accepted for use and occupancy only, and that there was a clear intention to end the tenancy with the male tenant. Based on the foregoing, I find the fixed term tenancy will continue until it is ended pursuant to the *Act*.

### Conclusion

The landlord's application for an Order of Possession is therefore 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 21, 2016

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Residential Tenancy Branch