



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB OPM FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for breach of a material term or an Order of Possession as a result of a mutual agreement to end tenancy pursuant to section 55; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:12 pm in order to enable the tenant to connect with this teleconference hearing scheduled for 1:00 pm. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord testified that the tenant was served with her Application for Dispute Resolution ("ADR") package including Notice of Hearing by registered mail to his rental unit address on July 29, 2016. The landlord provided documentary evidence in the form of a Canada Post receipt and tracking number. The landlord testified that the tenant received the ADR package. Based on the undisputed evidence of the landlord, I find that the tenant was sufficiently served with the landlord's ADR package in accordance with section 89 and 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

This tenancy began on September 1, 2015 as a 3 month fixed term. At the end of the three months, the tenancy was renewed for another 3 month fixed term and again for another 3 month fixed term. The current rental agreement was signed by both parties as a 6 month fixed term from March 1, 2016 to August 31, 2016. The rental amount of

\$1295.00 was payable on the first of each month. The landlord continues to hold the tenant's \$600.00 security deposit paid on September 1, 2015. The landlord believes the tenant is still residing in the rental unit.

The landlord submitted a copy of the current tenancy agreement with an end date of August 31, 2016. The residential tenancy agreement reads that, "At the end of this fixed length of time...the tenancy ends and the tenant must move out of the residential unit". This term of the tenancy agreement is initialed by both parties. The landlord testified that she advised the tenant she did not wish to renew the tenancy at the end of the fixed term but that the tenant refuses to vacate the rental unit.

The tenant did not attend this hearing although the landlord advised that the tenant has told her that this fixed term has been renewed previously and therefore the tenant should have the option to further renew the tenancy.

The landlord submitted a typewritten note dated July 16, 2016 and addressed to the tenant. The note is signed by both parties and titled, "Acknowledgement of End of Rental Lease on 31<sup>st</sup> August 2016". The content of the letter is as follows,

This is a letter to confirm that effective 31 August 2016 you and your roommates who are currently residing at the above address, will be moving out, as per our rental lease agreement dated 1<sup>st</sup> March 2016.

### Analysis

There is evidence (in the form of the residential tenancy agreement and the signed written note regarding the end of tenancy) that proves that this tenancy began as a fixed term tenancy and continued with several fixed term tenancy agreements with the most recent fixed term scheduled to end on August 31, 2016. 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

... Tenant may renew this lease for a further term ...Tenant's failure to obtain written agreement of renewal or extension of this Lease from the Landlord shall confirm end of tenancy at the expiry of the Lease.

(emphasis added)

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 tenant and landlord the security that comes with this fixed period of time. This form of tenancy also has a scheduled end (or expiration) date with the option to renew if both parties agree to set a new term for the tenancy. In this case, the residential tenancy agreement indicates that the tenancy will end and the tenant will vacate the rental unit on August 31, 2016. I have not been provided with evidence of any agreement to the contrary.

I find that the landlord has not agreed with the tenant to renew this rental agreement. The note signed on receipt by the tenant and submitted by the landlord as evidence shows that the landlord advised the tenant that she did not intend to renew the tenant's rental agreement after the end of the fixed term. Pursuant to the legislation and the Policy Guideline provided above, 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 residential tenancy agreement. When the tenant and landlord signed the rental agreement for a successive term of six months from March 1, 2016 to August 31, 2016, both parties agreed to all the terms within that agreement.

I find that the landlord provided her intention clearly in a way that supplemented the fixed term tenancy agreement. I find that the tenancy ended in accordance with the fixed term tenancy agreement, the singular document existing to describe the terms of the agreement between these two parties. I find the tenancy ended as of August 31, 2016. As the tenant is obliged to vacate the rental unit, I find that the landlord is entitled to a 2 day Order of Possession.

As the landlord has been successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to retain \$100.00 from the tenant's \$600.00 security deposit in order to recover the cost of the filing fee. The tenant's security deposit is reduced to \$500.00.

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: September 20, 2016

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Residential Tenancy Branch