



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      O, FF

### Introduction

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

- an "other" remedy; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant AC, tenant NW, tenant KS (collectively "the tenants"), landlord BJ and landlord SB (collectively "the landlords") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant TH did not attend the hearing; however the tenants confirmed they had authority to speak on her behalf.

The tenants confirmed receipt of the landlords' application and the landlords confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were duly served with the landlords' application and the landlords were duly served with the tenants' evidence.

### Preliminary Issue – Recordings Submitted by Tenant

The landlords submit a portion of the tenants' evidence package contains voice recordings which were obtained without the landlords' permission. The landlords questioned the admissibility of this evidence.

Section 78.1 of the *Act* sets out that section 44, among others, of the *Administrative Tribunals Act* (the "ATA") applies to the Residential Tenancy Branch. Subsection 44(1) of the *ATA* establishes that the Residential Tenancy Branch does not have jurisdiction over constitutional questions. I decline to dismiss the tenant's evidence on these grounds.

### Preliminary Issue – Landlord Late Evidence

The tenants testified that they received the landlords' evidence just two days prior to the hearing. The landlord acknowledged the evidence was late but testified that this was due to a death in the family which required an absence from the country from February 8, 2017 to February 16, 2017.

Rule 3.14 of the RTB *Rules of Procedure* establishes that documentary evidence must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. If the evidence is received following this timeline, the evidence may or may not be considered depending on whether the applicant can prove this evidence was new and relevant evidence that was unavailable at the time this application was made.

The evidence package was duly served just two days prior to the hearing and although the landlord testified that she had vacated the country due to a death, the landlords failed to show this evidence was new and unavailable at the time the application was made. For these reasons, I have not relied on the landlords two late evidence packages to form any part of my decision.

#### Preliminary Issue – Amendment of Landlord's Application

The landlords' application indicates they seek an "other remedy" which is defined in the details box of the application as;

*"The existing contract is a fixed term contract ending on February 28, 2017 that was signed by all parties. We believe the tenants will not vacate on the above stated date and therefore requesting an eviction order."*

I find that the tenants should reasonably have known that the landlord was seeking an order of possession based on the text written in the details box of the application. In accordance with section 64(3) of the *Act*, I amend the landlords' application to include a request for an order of possession.

#### Issue(s) to be Decided

Are the landlords entitled to an order of possession?

Are the landlords authorized to recover the filing fee for this application from the tenants?

### Background and Evidence

As per the submitted tenancy agreement, the tenancy began on March 1, 2016 on a fixed term until February 28, 2017 at which time the tenants must vacate. The tenancy agreement has a “right to renew” clause. This clause obligates the tenants to provide written notice of the intent to renew the lease for a further term upon the same terms and conditions, three months prior to the expiration of the original tenancy agreement.

It is the landlords’ position that the tenants did not provide written notice of their intent within the three months and despite negotiations between the parties following the three month mark, these negotiations did not result in a written signed tenancy agreement renewing the tenancy. Therefore the landlords seek an order of possession effective February 28, 2017.

The tenants claim that the “move-out” clause on the tenancy agreement is not initialed and therefore is not enforceable. Further the tenants contend that because negotiations regarding the renewal of the tenancy were held before the tenancy was set to end, their failure to provide written notice of their intent to renew within the three months is moot.

### Analysis

Section 44 of the *Act* establishes that a tenancy may end if 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.

Pursuant to section 55 of the *Act*, the landlord may be granted an order of possession if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term.

In relation to the tenants’ argument that the fixed term is not enforceable due to the absence of initials on the tenancy agreement, I find this to be inaccurate. There is no requirement under the *Act* for such initials. In this case the tenancy agreement clearly states the tenants must vacate by 1:00 p.m. on February 28, 2017. Based on the parties negotiations to extend the tenancy beyond the expiry date, I find the tenants understood the tenancy was set to end on February 28, 2017.

The tenants had an opportunity to initiate the renewal of the tenancy three months prior to the expiry and admittedly failed to do so. Any negotiations held after the three month mark, but prior to the end of tenancy did not result in a signed tenancy agreement.

Further, I find any negotiations between the parties did not negate the validity of the signed tenancy agreement.

For the reasons stated above, I find the landlords are entitled to an order of possession effective 1:00 p.m. February 28, 2017. As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for the application.

### Conclusion

The landlords' application for an order of possession is granted.

I issue a monetary order in the landlord's favour in the amount of \$100.00 against the tenant.

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: February 24, 2017

---

Residential Tenancy Branch