



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB OPT OLC RP O FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the Act"). This landlord applied for an Order of Possession for Breach of a Material Term of the Tenancy (and/or end of a fixed term tenancy) pursuant to section 55 and authorization to recover the filing fee pursuant to section 72.

The tenants applied pursuant to the Act for: an order requiring the landlord to comply with the Act pursuant to section 62; an order to the landlord to make repairs pursuant to section 33; and an Order of Possession pursuant to section 54. During the course of the hearing, the tenants withdrew the portion of their application relating to the landlord's compliance with the Act and repairs, seeking only an Order of Possession.

Both parties attended the hearing and were given a full opportunity to be heard, to present their testimony, and to make submissions. The landlord confirmed receipt of the tenants' Application for Dispute Resolution as well as the additional 58 pages of material plus photographs submitted for their application. The landlord also confirmed receipt of the tenant's amendment to their application requesting an Order of Possession for the tenants. The landlord also accepted the tenants' amendment. The tenant confirmed receipt of the landlord's own Application for Dispute Resolution as well as his 79 pages of materials submitted as evidence. Both parties testified that they have had an opportunity to read and review the other party's materials and respond to those materials. While the landlord's application was originally scheduled for a later date, both parties agreed that both applications (with the amendment to the tenant's application) should be heard together at this hearing.

### Issue(s) to be Decided

Are the tenants or the landlord entitled to an Order of Possession?  
Is the landlord entitled to recover his filing fee from the tenants?

### Background and Evidence

This tenancy began on July 1, 2009 as a 1 year fixed term and continued with subsequent 1 year fixed term agreements until 2013. In 2013 – 2016, no agreements were signed by the parties but the tenancy continued on a month to month basis. In July 2016, a new 1 year fixed term tenancy agreement was signed. A copy of that agreement was submitted for this hearing. The tenants dispute the validity of this most recent agreement. The landlord requests an Order of Possession for the end date of this agreement. The landlord continues to hold a \$490.00 security deposit paid by the tenants at the outset of this tenancy.

At the end of the 1<sup>st</sup> year, the tenancy was renewed for another 1 year fixed term to 2011 and again for another 1 year fixed term to 2012 and again to 2013. The tenants testified that, in 2013 – 2016, they were not required to sign new fixed term tenancy agreements. The tenants testified that their tenancy was always renewed and that, during 2013 – 2016, their tenancy became a month to month tenancy, they believed that their tenancy would continue indefinitely. They testified that, at the outset of this tenancy, the landlord's mother (and co-landlord at the time) told them that they could stay long-term. Tenant MM testified that the landlord's mother told them they would ideally stay forever in the rental unit.

Tenant MM provided testimony with respect to the signing of the most recent tenancy agreement. She provided wavering testimony as to whether or not she signed the tenancy agreement. She testified that she believed she did not sign the tenancy agreement. She also testified that she does not believe that her co-tenant, Tenant DL signed the current tenancy agreement willingly. She testified that, based on the history of this tenancy, the tenants did not think that they might be required to move out at the end of the tenancy.

The landlord referred to the copy of the current tenancy agreement with an end date of July 1, 2017. 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: a landlord and a tenant. Further, it appears that the tenant MM provided initials under each of the landlord's and tenant DL's initials.

The landlord submitted a copy of a letter provided to the tenants on March 31, 2017 indicating that the letter was a courtesy reminder that the tenancy will end and that the landlord intends to renovate the unit. It states,

*Please be reminded that the lease agreement that we signed in July 2016 for your tenancy in the Property ... is for a fixed term, ending on June 30, 2017. We agreed, on page 2 of the Lease Agreement, that at the end of the fixed term, the tenancy ends and the tenant must move out...*

*... I hope this letter provides ample amount of time for you to begin the moving process.*

The landlord submitted that he gave exceptionally full notice well beyond what he was required or obliged to do in the circumstances. He testified that, at no point did he tell the tenants that he would continue the tenancy at the end of this particular tenancy agreement. He testified that, in the first several years of their tenancy, the tenants and their neighbouring tenants got along very well. He testified that several subsequent neighbouring tenants have been unable to get along with these tenants.

The tenant acknowledges that she had been unwell which had caused her to be difficult to deal with at points during the last (year). However, she testified that she is now in better health and that she does not pose any kind of risk or threat to the neighbours. Further, she testifies that she was not well enough to take responsibility for her signature in signing the most recent tenancy agreement.

### Analysis

There is evidence in the form of the residential tenancy agreements and testimony at this hearing 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 June 30, 2017. 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 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 June 30, 2017.

The tenants argue that the annual renewal of successive fixed term tenancies means that they were entitled to assume that their tenancy would continue. The tenants' assumption is incorrect and does not fit with either the most recent tenancy agreement, the *Act* or the Residential Tenancy Policy Guidelines, including guideline no. 30. Even if it were the case that the tenants acted within reason to assume that their tenancy could continue, they were not in a position to do so considering their signing of the most recent fixed term tenancy agreement. I accept the testimony of the landlord and the supporting documentary evidence (the residential tenancy agreement) that the landlord and one of the tenants, on behalf of both of the tenants, signed the agreement.

The landlord ensured that the tenants were aware he intended to rely on the end of the fixed term tenancy. He did so more than 2 months prior to the end of the fixed term. He testified that he wished to give the tenants plenty of notice of this change/non-continuance of the lease. The note given to the tenants was received and clearly states in no uncertain terms that the tenancy will not continue. The note shows that the landlord advised the tenants that he did not intend to renew the tenants' rental agreement after the end of their fixed term. The correspondence between parties shows that they were well aware of the landlord's intention that they vacate the residence by August 31, 2017. I find that the landlord has not made any agreement with the tenants to renew this rental agreement and continue this tenancy.

I accept as the most reliable evidence the singular document existing to describe the terms of the agreement between these two parties and I find that the document, signed by the parties requires that the tenants vacate the rental unit when the tenancy ends

June 30, 2017. As the tenants are obliged to vacate the rental unit, I find that the landlord is entitled to an Order of Possession dated June 30, 2017.

### Conclusion

The tenants' application for an order requiring the landlord to comply with the *Act* and an order that the landlord make repairs to the rental unit are both withdrawn.

I issue a formal copy of an Order of Possession effective June 30, 2017. 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.

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: May 19, 2017

---

Residential Tenancy Branch