



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, O

### Introduction

This hearing was held in response to the Tenant's Application for Dispute Resolution (the "Application") for the Landlord to comply with the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement. The Tenant also applied for 'Other' issues.

The Tenant and an agent for the Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application by registered mail. The Tenant confirmed receipt of the Landlord's six pages of documentary evidence. The Tenant confirmed that prior to the hearing she had provided into documentary evidence: a copy of the tenancy agreement and addendum; a move-in condition inspection report; and, Canada Post tracking receipts to verify service of the Application.

The hearing process was explained and no questions were asked of how the proceedings would be conducted. Both parties were given a full opportunity to present oral and documentary evidence, cross-examine the other party, and make submissions to me on the issues to be decided.

### Issue(s) to be Decided

- Did the Tenant enter into the fixed term tenancy agreement under duress?
- Has the Tenant provided sufficient evidence that the fixed term tenancy agreement was falsified?

### Background and Evidence

The parties agreed that the Tenant started to rent the rental unit on July 1, 2006 on a month to month basis. A tenancy agreement, which was not provided into evidence, was signed by the parties and rent was payable in the amount of \$740.00 on the first

day of each month. The Tenant paid a security deposit of \$370.00 at the start of that tenancy.

The Landlord testified that during the tenancy, the Tenant started to get into rental arrears. As a result, he served the Tenant with a notice to end tenancy for unpaid rent. The Landlord then applied for an Order of Possession to end the tenancy for unpaid rent. In a hearing that took place on February 18, 2016, the file number for which appears on the front page of this Decision, the Arbitrator who conducted that hearing issued the Landlord with an Order of Possession on the same day to end the tenancy. The Tenant did not appear for that hearing.

The Tenant explained that she was not notified of the hearing but confirmed that she did not appeal the February 18, 2016 Decision either through the review process provided for by the Act or through a judicial review in the BC Supreme Court.

The Landlord explained that after he was issued the Order of Possession he filed the order in the BC Supreme Court and was then issued with a Writ of Possession to have the order enforced. The Writ of Possession was issued to the Landlord on March 18, 2016 and was provided into evidence for this hearing.

The Landlord explained that before he applied to get a court bailiff to evict the Tenant, he had a discussion with the Tenant as she pleaded with him to continue the tenancy as she had nowhere else to go. The Landlord stated that he did not dislike the Tenant and was willing to give her another chance to prove herself that she could behave in the tenancy and to demonstrate she could pay rent on time. The Landlord testified that he then asked the Tenant to sign a fixed term tenancy agreement so that he could assess whether after the fixed term if was willing to continue the tenancy with the Tenant.

The Tenant provided that signed fixed term tenancy agreement into evidence. The agreement was signed on April 25, 2016 with a start date of May 1, 2016 for a fixed term to expire on April 30, 2017. The agreement stipulates that at the end of this term, the tenancy will end and the Tenant is required to move out. The boxes verifying this provision of the tenancy agreement have initials from the Landlord and the Tenant.

The Landlord explained that the Tenant's security deposit was transferred from the previous month to month tenancy to the new fixed term tenancy and that a move-in condition inspection was completed on April 25, 2016. The Landlord explained that the Tenant is now refusing to vacate the rental unit pursuant to the signed fixed term tenancy agreement and that he no longer wishes to continue the tenancy with the

Tenant. The parties confirmed that the Landlord had not accepted any rent from the Tenant for May 2017.

The Tenant asserted that when she signed the April 25, 2016 tenancy agreement, it was signed by her under duress. The Tenant explained that she was made to feel that she had no choice but to sign a fixed term tenancy agreement otherwise she was going to be evicted by the Landlord. The Tenant testified that the Landlord assured her verbally that he would renew the tenancy agreement after the fixed term ended and this was the basis on which she signed it.

The Tenant stated that the Landlord was not allowed to ask her to sign a new fixed term tenancy because she was already in a long time tenancy with the Landlord on a month to month basis and therefore it was signed under duress. The Tenant testified that she did take the tenancy agreement to her lawyer who advised her to sign the agreement. However, the Tenant submitted that in the interim time, the Tenant has learnt that her lawyer is now acting for the Landlord and therefore, this is conflict of interest. The Tenant explained that she is taking this matter up with her legal team.

The Tenant then alleged that the Landlord had forged her initials in the part of the tenancy agreement that stipulated that the tenancy was to end on April 30, 2017. The Tenant stated that most of the tenancy agreement was typed by the Landlord apart from the initials section which was handwritten.

In addition, the Tenant claims that she attended the Residential Tenancy Branch and showed an Information Officer the April 25, 2016 tenancy agreement. The Tenant testified that the Information Officer informed her that in their experience of looking at hundreds of tenancy agreements on a daily basis, there was clear evidence that the Tenant's initials had been forged.

I noted that in the details section of the Application, the Tenant writes that she has been looking for another place to move to but the rental occupancy rates are very low and that the Tenant lives close to her elderly mother who she is in the process of caring for.

The Landlord denied the Tenant's allegations that the Tenant was made to sign the fixed term tenancy under duress. The Landlord stated that occupancy of the rental unit under was given only for one year so that the Landlord could decide whether to renew the tenancy agreement based on the Tenant's behaviour which is why the Tenant was made to sign the addendum cautioning the Tenant of her conduct in this tenancy. The Landlord denied that the Tenant was promised a continuing tenancy after the fixed term was over. The Landlord also rejected the Tenant's claim that he forged her initials

on the fixed term tenancy agreement and stated that the Tenant was lying under oath which was a criminal offense.

The Landlord pointed to several areas on the fixed term tenancy agreement which was also handwritten including: the Tenant's first and middle name, the security deposit information, and annotations and initials made to the addendum of the agreement. The Landlord explained that he wanted to get the Tenant to initial the items by hand on the agreement so that the Tenant understood the gravity of what she was entering into.

At the end of the hearing, the Landlord asked whether he can accept rent for May 2017 without re-instating the tenancy. The Landlord was informed that he is not barred from accepting rent from the Tenant but he must put the Tenant on sufficient notice that the rent is being accepted for use and occupancy only and that the tenancy will not be re-instated as a result of payment being made.

### Analysis

Section 44(1) of the Act provides ways in which a tenancy may end. Section 44(1) (b) of the Act stipulates that a tenancy ends 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.

In this case, the evidence before me is that the tenancy agreement signed by the parties on April 25, 2016 is for a fixed term tenancy that was due to end on April 30, 2017. The tenancy agreement details that the tenancy will end and the Tenant is required to vacate the rental unit on this date. As verified by the parties' initials.

With respect to the Tenant's claim that she signed this tenancy agreement under duress, I find the Tenant has failed to provide sufficient evidence of this. The Tenant failed to satisfy me that the Landlord forced, threatened, or pressured the Tenant into signing it, and relies only on an disputed oral allegation to support this theory. In fact, I find the Tenant was given the opportunity to show the tenancy agreement to her lawyer, irrespective of whether she got the correct advice from her lawyer. This evidence further convinces me that there was no duress in the signing of the fixed term tenancy.

The Tenant stated that the Landlord had no right to ask her to enter into a fixed term tenancy and that the tenancy should have continued on the previous month to month basis. I reject this claim. This is because, the Tenant failed to pay rent during the periodic tenancy and the Landlord pursued legal remedy under the Act to end the tenancy properly for that reason. The Tenant did not challenge the February 18, 2016

Order of Possession or seek to have this overturned. Therefore, the tenancy was ended properly and the Landlord was legally entitled to evict the Tenant or offer another tenancy based on his terms and conditions.

I find the Tenant still had a choice to sign the fixed term tenancy and if the Tenant signed it to avoid legal eviction faced by her, then I find she did this of her own accord and I don't consider this as duress. Therefore, the Tenant's assertion that the fixed term tenancy agreement was signed under duress is dismissed.

With respect to the Tenant's allegation that the Landlord forged her initial on the fixed term tenancy agreement, again I find the Tenant has failed to provide sufficient evidence of this. I make this finding based on the following reasons.

Firstly, I concur with the Landlord that the tenancy agreement signed by the parties is not all typed, but there are handwritten initials and parts throughout the agreement. This does not convince me that the initials were forged by the Landlord because this is not the only item that was handwritten. Secondly, I have examined and compared the Tenant's initials on the addendum to the alleged forged initials on the fixed term portion. However, I am unable to see any distinctive difference that allows me to conclude evidence of forgery. Thirdly, the Tenant claimed that an Information Officer had concurred with her allegation of forgery. In this respect, the Tenant provided no evidence from that Information Officer about this conclusion or whether that person had the authority or expertise to make this conclusion. Therefore this evidence is not reliable. Lastly, I find the Tenant has failed to present any expert or comparative evidence that would convince me that the Landlord forged the Tenant's initials. The Tenant makes this allegation and therefore bears the burden to prove it which I find she has failed to do.

Furthermore, I am concerned as to how the Tenant came to be in possession of a tenancy agreement which she claims to have a forged initial on it, since this would suggest that the Tenant would have known of this incorrect initial shortly after the fixed term tenancy commenced. This would suggest that the Tenant would have brought it to the attention of the Landlord in writing earlier. There is insufficient evidence of this.

After considering the totality of evidence before me, I find the evidence suggests that the Tenant was given occupancy of the rental unit under a fixed term tenancy out of generosity by the Landlord, not under duress as claimed by the Tenant. However, under that fixed term tenancy agreement, the Landlord retained the right to unilaterally end the tenancy on April 30, 2017 without having to provide any reason. I find that when the Tenant became aware of this, she then decided to pursue an allegation of fraud and

duress by the Landlord in an effort to have the tenancy continue indefinitely because she was facing a significant burden from having to move from the rental unit. I find these claims are unproven and I dismiss the Tenant's Application and find that the fixed term tenancy signed by the parties is legal, valid, and enforceable.

With respect to the Landlord's request for an Order of Possession to end the tenancy, Section 55(2) (c) of the Act does allow a landlord to request an Order of Possession if the tenancy agreement is a fixed term tenancy and tenant is required to vacate the rental unit at the end of the fixed term. However, this request can only be made by making an Application. There is no Application before me from the Landlord. However, the Landlord is at liberty to file an Application for an Order of Possession based on a breach of agreement by the Tenant.

### Conclusion

The Tenant has failed to meet the burden to prove the claims made in the Application. Therefore, the Tenant's Application is dismissed **without** leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 18, 2017

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Residential Tenancy Branch