



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, OLC, OPB

### Introduction

The Application for Dispute Resolution filed by the landlord seeks an Order of Possession on the basis that the tenancy agreement provides that the tenancy has come to an end and the tenant must vacate the rental unit.

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order that the landlord comply with a new tenancy agreement that was entered into on May 10, 2017 that provided that a new tenancy would start on June 1, 2017 and end on May 31, 2018 and the tenant would have to vacate at that time.
- b. An order that the tenant recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other by mailing, by registered mail to where the other party resides. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order of Possession effective July 31, 2017.
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

Around the middle of June 2016 the landlord and TB and SM (as tenants) entered into a fixed term tenancy agreement dated June 15, 2016 that provided the tenancy would start on August

1, 2016, end on July 31, 2017 and the tenants would have to vacate at that time. The rent was \$1600 per month. The tenants paid a security deposit of \$800.

At the time the tenancy agreement was signed the tenants inquired whether there would be a problem for TB to remain in the rental unit if SM moved out. The landlord assured the tenants this would not be a problem.

On March 27, 2017 TB e-mailed the landlord advising that she loved the apartment, and would like to stay another year. She also advised the SM was moving out although the date was not set. The tenant asked if her cousin could move in.

On March 28, 2017 the landlord responded saying that if you chose to have someone move we can add an extension. That person would not be on the lease ....

On March 28, 2017 TB e-mailed the landlord advising that SM would be moving out on May 14, 2017 and inquiring whether she should contact the landlord's agent.

On April 19, 2017 the landlord e-mal TB apologizing for the delayed response (she had just returned from holidays) and stating "When would you be available to get together to sign a new lease. We can start the new lease when S moves out officially."

The parties met on May 10, 2017. There is a dispute as to what took place at that meeting. The tenant testified as follows:

- The landlord was introduced to her cousin CM (Witness #2)
- The parties did a walk through and completed a Condition Inspection Report.
- The landlord and the tenant (and Witness #2) discussed the details of his move in and that TB would be the sole tenant on the lease.
- Witness #2 left.
- A document releasing SM for the balance of the tenancy was signed by the landlord.
- The landlord and the Tenant signed a fixed term tenancy agreement that included the following terms:
  - The new tenancy would start on June 1, 2017 and end on May 31, 2018. The tenants would have to vacate at that time.
  - The rent would be \$1650 due on the last day of each month.
  - The security deposit would be increased by \$25.
- The landlord signed a document "Access Device Request Form" which provided for an additional FOB and bike storage key.
- The landlord provided her bank account information.

On May 11, 2017 the tenant TB received two emails from the landlord and one from the rental agency. The tenant produced an e-mail from the landlord dated May 11, 2017 that states

"Looking forward to another year with you. Can you send me your phone number, the one I have is out of service. Could you give me a call. It's all good, just easier to talk vs. email." The second e-mail dated May 11, 2017 asks whether TB's boyfriend would be staying in the rent unit for more than 14 days a month and whether CM would be staying in the rental unit more than 14 days a month. "If so we will need to add them as tenants to the lease."

On May 11, 2017 TB received an email from the landlord's agent that states "Your landlord has reached out to advise they will not be offering a renewal of your tenancy. As such, per your fixed term agreement you will be required to vacate at the end of your tenancy on July 31, 2017."

The landlord gave the following testimony:

- She acknowledged she met with the tenants on May 10, 2017.
- She acknowledged doing a walk through at that time.
- She acknowledged signing the "Access Devise Request Form."
- However, she denied signing an agreement that would release SM for the tenancy agreement.
- She denied signing an agreement with TB for a new tenancy commencing June 1, 2017 and ending on July 31, 2018.
- She testified she had concerns about the tenant as to whether she would be able to pay the rent and decided she did not wish to enter into a new agreement with the Tenant.

The tenant paid the additional \$50 in rent for June and \$50 in July. She also gave the landlord an additional \$25 to increase the security deposit by that sum.

The tenant referred to a telephone conversation she had with landlord on May 12, 2017 where the landlord told her that she recommended that she apply to her agent.

There was an exchange of many e-mails between the parties.

On May 15, 2017 the tenant wrote the landlord asking that she provide her with a copy of the new tenancy agreement that was signed on May 10, 2017. There is a second e-mail dated May 29, 2017 from the tenant to the landlord for a copy of the tenancy agreement.

Tenant's Witness #1 confirmed the tenant's version of events and testified she was present when the tenant and the landlord signed new fixed term tenancy agreement that provided that the tenancy would start on June 1, 2017, end on May 31, 2018 and that the tenants would have to vacate at that time.

Tenant's Witness #2 testified he was not present when the tenant and landlord signed the new tenancy agreement. However, he was present to meet the landlord and can confirm the

conversation of the tenant and the landlord as to what was to be included in the new tenancy agreement.

Analysis:

The issue is whether the parties signed a second tenancy agreement on May 10, 2017.

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)”

After carefully considering all of the evidence I determined the tenant’s version of the events on May 10, 2017 is more credible than the landlord’s based on the following:

- The e-mails leading up to the meeting on May 10, 2017 indicates the parties were meeting to enter into a new fixed term tenancy and with a new tenant living there.
- The landlord’s first e-mail on May 11, 2017 to the tenant states “looking forward to another year with you.”
- The conducting of a Condition Inspection is more consistent with the tenant’s version ending the previous tenancy and starting a new tenancy.
- The landlord’s signing of the Access Device Request form is more consistent with the tenant’s version than the landlord’s.
- The conduct of the parties afterwards including the tenant demand that the landlord provide the tenancy agreement and the tenant paying the additional rent is more consistent with the tenant’s version.
- The Tenant’s witnesses confirm her version of the events.

As a result I determined the landlord and the tenant TB signed a fixed term tenancy agreement that provided that the tenancy would start on June 1, 2017, end on May 31, 2018 and the tenant would have to vacate at that time. I further determined the rent was increased to \$1650 per month payable in advance on the last day of the previous month. The security deposit was increased by \$25 per month. The landlord agreed to release the tenant SM from the balance of the tenancy agreement and agreed to Witness #2 being permitted to live in the rental unit.

I dismissed the landlord’s application for an Order of Possession.

I determined the Tenant was successful with her application. I ordered that the landlord comply with the tenancy agreement that provided the fixed term tenancy would start on June 1, 2017 and end on May 31, 2018. As the tenant has been successful I ordered that the landlord pay to the tenant the cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

**This decision is final and binding on the parties.**

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 19, 2017

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Residential Tenancy Branch