



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 642495 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

OPB, FFL

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession and to recover the fee for filing this Application for Dispute Resolution. The application for an Order of Possession appears to be based on the fact the Tenant did not vacate the rental unit on December 01, 2019 in accordance with the fixed term of the tenancy agreement.

The Agent for the Landlord stated that on December 24, 2019 the Dispute Resolution Package was sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

In January of 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the door of the rental unit on January 18, 2020. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

In January of 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was sent to the Landlord, by registered mail, on January 26, 2020. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All documentary evidence accepted as evidence for these proceedings has been reviewed, although it is only referenced in this decision if it is directly relevant to my decision.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recover the fee for filing this Application for Dispute Resolution?

### Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- this tenancy began on November 28, 2018;
- the parties signed a fixed term tenancy agreement, which required the Tenant to vacate the unit by December 01, 2019;
- the tenancy agreement declared that the Tenant must vacate the rental unit because of “family”;
- the Tenant was told the reason she had to vacate the rental unit at the end of the fixed term was because the Landlord’s son would be moving into the rental unit;
- prior to November 21, 2019 the Tenant asked the Landlord, on two occasions, if she could remain in the rental unit on a month-to-month basis after December 01, 2019;
- the Landlord responded to each of the Tenant’s request to go month-to-month to indicate he was considering the request;
- on November 21, 2019 the Tenant sent the Landlord an email, in which she indicated she assumed that the tenancy would be continuing on a month-to-month basis;
- on November 26, 2019 the Landlord sent the Tenant an email, in which he agreed to extend the terms of the tenancy until January 30, 2020;
- on November 27, 2019 the Landlord sent the Tenant an email, in which he asked the Tenant if she was agreeable to his suggestion that they extend the terms of the tenancy until July 30, 2020; and
- the Tenant vacated the rental unit on February 01, 2020.

The Agent for the Landlord stated that:

- the July 30, 2020 “end date” he mentioned in his email of November 27, 2019 was an error;
- on December 20, 2019 he sent the Tenant an email in which he informed the Tenant she must vacate by January 30, 2020;

- he placed a copy of the email, dated December 20, 2019, under the Tenant's door;
- on December 21, 2019 the Tenant sent him an email, in which she declared that she had understood she could remain in the rental unit until July 30, 2020;
- on December 24, 2019 the Tenant sent him an email, in which she reiterated that she thought she could remain in the rental unit until July 30, 2020 but that she would try to find alternate accommodations so that she could vacate by January 30, 2020, in accordance with the Landlord's wishes; and
- shortly after midnight on January 31, 2020 the Tenant informed him that she would be vacating the rental unit on February 01, 2020, although he did not submit proof of this communication.

The Tenant stated that:

- she did not receive the email dated December 20, 2019 until it was slipped under her door on December 21, 2019;
- on December 21, 2019 she sent the Landlord an email, in which she declared that she had understood she could remain in the rental unit until July 30, 2020;
- on December 24, 2019 she sent the Landlord an email, in which she reiterated that she thought she could remain in the rental unit until July 30, 2020 but that she would try to find alternate accommodations so that she could vacate by January 30, 2020, in accordance with the Landlord's wishes; and
- on, or about, January 23, 2020 she informed the Landlord that she would be vacating the rental unit on February 01, 2020, although she did not submit proof of this communication.

The Landlord submits that any changes to the terms of the tenancy agreement must be in writing, as declared by the tenancy agreement and as is required by legislation.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant vacated the rental unit on February 01, 2020. As the rental unit has been vacated and the Landlord now has legal possession of the unit, I find that there is no need for an Order of Possession, and I dismiss the Landlord's application for an Order of Possession.

On the basis of the undisputed evidence, I find that the Tenant and the Landlord entered into a written tenancy agreement, which declared that the Tenant must vacate the rental unit by December 01, 2019.

**Residential Tenancy Branch Policy Guideline #30 reads, in part;**

Effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term if:

- ☐ The tenancy agreement is a sublease agreement; or
- ☐ The tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation.

The Legislation allows for limited circumstances where a vacate clause in a tenancy agreement is enforceable:

- ☐ The tenancy agreement is a sublease agreement;
- ☐ The tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation; or
- ☐ If one of the following occurred before October 26, 2017:
  - (i) the landlord entered into a tenancy agreement, to begin after the expiry of an existing tenancy agreement that includes a requirement to vacate the rental unit<sup>6</sup>, with a new tenant for the rental unit, or
  - (ii) the director granted an order of possession to the landlord on the basis of a requirement to vacate the rental unit in an existing tenancy agreement.

Residential Tenancy Branch Regulation 13.1(2) stipulates that a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term if the landlord is an individual, and the landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term. On the basis of the undisputed evidence that the Landlord's son intends to move into the rental unit, I find that the Landlord had the right to require the Tenant to vacate the rental unit at the end of the fixed term of the tenancy.

Section 1 of the tenancy agreement declares, in part, that a change or addition to the tenancy agreement is unenforceable unless it is agreed to in writing and initialed by each party.

Section 1 of the Residential Tenancy Regulation Schedule stipulates that a tenancy agreement may be amended to change or remove a term of the tenancy agreement, other than a standard term, only if both the Landlord and the Tenant agree in writing to the amendment and if they both initial that amendment.

On the basis of the undisputed evidence, I find that the Landlord and the Tenant verbally agreed that they would extend the end date of the fixed term tenancy. In the event that the parties wished to continue with the original tenancy and simply amend the end date of the fixed term of the tenancy, they would have had to make that amendment

in writing. As the agreement was not made in writing, as is required by both the tenancy agreement and the Residential Tenancy Regulation, I find that the verbal agreement did not extend the fixed term of the tenancy.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term.

As the written tenancy agreement was a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), required the tenant to vacate the rental unit at the end of the term, and the parties did not agree, in writing, to extend that term, I find that the tenancy ended on December 01, 2019, pursuant to section 44(1)(b) of the *Act*.

Section 1 of the *Act* stipulates, in part, that a “tenancy agreement” is an agreement whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. (Emphasis added)

On the basis of the undisputed evidence, I find that on November 26, 2019 the Landlord agreed, via email, to continue the tenancy, under the same terms of the original tenancy agreement, until January 30, 2020. On the basis of the emails sent by the Tenant, I find it is clear that the Tenant wished to continue with the tenancy on a month-to-month basis.

On the basis of the email, dated November 26, 2019, and the actions of both parties, I find that the parties entered into a new verbal tenancy agreement. I find that the terms of this verbal agreement were the same as their written tenancy agreement, with the exception of the requirement that the Tenant must vacate the rental unit on December 01, 2019.

I find that the Tenant had the right to remain in the rental unit after December 01, 2019 on the basis of the new verbal tenancy agreement. I therefore find that the Tenant did not breach the written tenancy agreement when she failed to vacate the rental unit on December 01, 2019.

As the Tenant did not breach the written tenancy agreement when she failed to vacate the rental unit on December 01, 2019, I would not have granted the Landlord an Order of Possession on the basis that the unit was not vacated on December 01, 2019.

I find that the Landlord has failed to establish the merit of the Application for Dispute Resolution and I dismiss the Landlord's application to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

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: February 07, 2020

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Residential Tenancy Branch