



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, FFT  
                                 OPB

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenants’ Application for Dispute Resolution was made on April 23, 2021. The Tenants applied for an order that the Landlord complies with the *Act* and the return of their filing fee.

The Landlords’ Application for Dispute Resolution was made on May 3, 2021. The Landlord applied for an order of possession to enforce the vacate clause in the tenancy agreement.

One of the Landlords (the “Landlord”) and three of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. All parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

### Issues to be Decided

- Is the vacate clause contained in the tenancy agreement in compliance with the *Act*?
- Are the Tenants entitled to the recovery of their filing fee for this hearing?

### Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that these parties entered into a one-year fixed-term tenancy starting May 1, 2020 and ending April 31, 2021. That rent in the amount of \$3,500.00 is to be paid by the first day of each month, and that the Landlords collected a \$1,750.00 security deposit and a \$1,750.00 pet damage deposit at the outset of this tenancy. Both parties submitted a copy of the tenancy agreement into documentary evidence.

The Tenants testified that when they signed this tenancy agreement, they had not been aware that a landlord could not include a vacate clause in their contract. The Tenants testified that they had understood that the vacate clause was there just encase the Landlords did not like them as Tenants. The Tenants are asking that the Landlords be ordered to comply with the *Act* and allow their tenancy to roll into a month-to-month tenancy.

The Landlord testified that the vacate clause had been included in the tenancy agreement as they are going to move into the rental property themselves, which is permitted under the *Act*.

The Tenants testified that they do not believe that the Landlord has any intention to move into the rental property as the Landlord engaged in negotiations with two of them to renew the tenancy and that during these negotiations, the Landlord demanded a large rent increase.

The Landlord agreed that they had entered into negotiations to start a new tenancy in February 2021, with two of the Tenants of this tenancy but that it was their intention that this new tenancy would still end on the original fixed term tenancy end date of April 30, 2021.

Additionally, the Landlord testified that these Tenants signed the contract that included a vacate clause, so they are bound by it and must move out.

The Landlord testified when asked by this Arbitrator, that they had prepared the tenancy agreement that was signed between these parties.

### Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

After hearing the testimony of these parties, I find that the issue in this case is whether or not the vacate clause contained in the tenancy agreement is valid and enforceable under the *Act*. Section 13 (2.f iii) of the *Act* states the following regarding fixed-term tenancy:

#### *Requirements for tenancy agreements*

13 (2) (f) *the agreed terms in respect of the following:*

*(iii) if the tenancy is a fixed term tenancy, the date on which the term ends;*

*(iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;*

Pursuant to section 13 of the *Act*, fixed-term tenancies are permitted in prescribed circumstances. The *Residential Tenancy Regulation* (the “*Regulation*”) defines those circumstances as the following:

#### ***Fixed term tenancy — circumstances when tenant must vacate at end of term***

13.1 (1) *In this section, "close family member" has the same meaning as in section 49 (1) of the Act.*

*(2) For the purposes of section 97 (2) (a.1) of the Act [prescribing circumstances when landlord may include term requiring tenant to vacate], the circumstances in which 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 are that*

- (a) the landlord is an individual, and*
- (b) that 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.*

Pursuant to section 13.1 of the *Regulation*, the *Act* allows a landlord to include a vacate clause in incidences when the Landlord or a close family member of the Landlord will occupy the rental unit at the end of the fixed term.

Further guidance on section 13.1 of the *Regulations* is provided in the Residential Tenancy Policy Guideline #30. Fixed Term Tenancy, which states the following:

**“Requirement to Vacate**

A vacate clause is a clause that a landlord can include in a fixed term tenancy agreement requiring a tenant to vacate the rental unit at the end of the fixed term in the following circumstances:

- the landlord is an individual, and that 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.
- the tenancy agreement is a sublease agreement

For example, an owner can rent out their vacation property under a fixed term tenancy with a vacate clause if they or their close family member intend in good faith to occupy the property at the end of the fixed term. There is no minimum amount of time that a landlord or close family member must occupy the rental unit. Occupancy can be part time, e.g., weekends only.

The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable”

Therefore, pursuant to the *Act*, *Regulations*, and policy guide a landlord may include a vacate clause in their tenancy agreements if the Landlord or a close family member of

the Landlord intends, in good faith, to occupy the rental unit at the end of the fixed term. The *Act* requires that the vacate clause be in writing, state the reason for ending the tenancy and be initialled by both parties to the tenancy agreement.

I have reviewed the tenancy agreement signed between these parties, noting there is a vacate clause, section 1.1, written into this tenancy agreement, and that has been initialled by both parties. Section 1.1 of the tenancy agreement states the following:

**“1.1 It is understood that the tenancy ends at the expiry of the fixed term and that the tenant must vacate the premises. This requirement is only permitted in circumstances prescribed by the Residential Tenancy Regulations.**

Reason Tenant must Vacate: Landlord use of Property”

In this case, the Landlord stated the reason for ending the tenancy as “Landlord use of Property.” The Tenants claim that the Landlord, or close family member of the Landlord, does not intend to move into the property but that the clause was included, so the Landlord to decide if they wished to continue in a tenancy with these Tenants and allowed the Landlord to increase the rent beyond the allowable amount. The Landlord testified that it is their intent to personally move into the rental unit.

After reviewing the tenancy agreement, and I find the term “Landlord use of Property” to be vague and unclear as to what the intended use of this property was going to be at the end of this fixed term.

As the term “Landlord use of Property” is not defined in this tenancy agreement, I refer to section 49 of the *Act* to determine the legal definition of this term, as this section of the *Act* also uses the term “Landlord use of property.” Section 49 of the *Act* provides for six different options for ending a tenancy associated with the term “landlord use of property”; consisting of the tenant ceases to qualify for the rental unit, the landlord or a close family member will occupy the rental unit, the purchaser of the rental unit will occupy the rental unit, the property will be renovated or repaired, the property will be demolished, or the property will be converted. Due to the multiple options provided under the *Act* for the use of the term “Landlord use of Property,” I find the Landlord’s use of the term “Landlord use of Property” to have been vague and unclear.

When there is a vague and unclear term contained in a contract, the legal rule of Contra Proferentem is considered when making a ruling concerning the validity of the term. Contra Proferentem is a rule used in the legal system when interpreting contracts, which basically means that any ambiguous clause contained in a contract will be interpreted against the party responsible for drafting the clause.

I accept the Landlord's testimony that they had prepared the tenancy agreement signed between themselves and these Tenants. As it was the Landlord who was responsible for the drafting of this tenancy agreement, I find that I must settle the ambiguous nature of the term "Landlord use of Property" against the Landlord.

As section 13.1 of the Regulations only permits the use of two of the six possible options to end a tenancy under the term "Landlord's use of Property," I find that the Landlord was required to be more specific in their description of what they would be using the property for at the end of this fixed term in order to be in compliance with the *Act*. Specifically, I find that the Landlord was required to provide a description of who would be moving into the rental property at the end of this fixed term.

Consequently, I find that the vacate clause contained in this tenancy agreement was not in compliance with the allowable reason for ending a tenancy pursuant to section 13.1 of the *Regulations* and is therefore not enforceable.

As for the Landlord's claim that the Tenants ought to be bound by the signed tenancy agreement since the Tenants signed this tenancy agreement with full knowledge of the inclusion of this vacate clause. During the hearing, the Landlord was directed to section 5 of the *Act* that states the following:

***This Act cannot be avoided***

*5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.*

*(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.*

Pursuant to section 5 of the *Act*, I find that these parties are not permitted to contract contrary to the *Act*, and that section 1.1 of the tenancy agreement is an attempt to contract contrary to the *Act* and is therefore not enforceable.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application. The Tenants are granted permission to take a one-time deduction of \$100.00 from their next month's rent in full satisfaction of this awarded amount.

### Conclusion

I find that section 1.1 of the tenancy agreement signed between these parties to be a vacate clause in breach of section 13.1 of the *Regulations* and to be of no legal force or effect.

I grant the Tenants permission to take a one-time deduction of \$100.00 from their next month's rent.

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: August 10, 2021

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Residential Tenancy Branch