



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (Act) for an order of possession based on the end of a fixed term tenancy agreement, and to recover the cost of the filing fee.

The landlord and the tenants attended the teleconference hearing and were affirmed. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed that they had the opportunity to review the documentary evidence served upon them by the other party. Given the above, I find the parties were sufficiently served in accordance with the Act.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- If yes, is the landlord also entitled to the recovery of their filing fee under the Act?

Preliminary and Procedural Matters

Both parties confirmed their respective email addresses and were advised that the decision will be emailed to both parties.

Background and Evidence

A copy of the written tenancy agreement was submitted in evidence. The tenancy began on August 1, 2020 and under section B of the standard Residential Tenancy Branch (RTB) tenancy agreement Form #RTB1, it states the following:

2. BEGINNING AND TERM OF THE AGREEMENT (please fill in the dates and times in the spaces provided)

This tenancy created by this agreement starts on: 01 August 2020
day month year

Check ☐ A) and continues on a month-to-month basis until ended in accordance with the Act.
 A, B or C ☐ B) and continues on another periodic basis, as specified below, until ended in accordance with the Act.
 ☐ weekly ☐ bi-weekly ☐ other:

☒ C) and is for a fixed term ending on 31 July 2021
day month year

IF YOU CHOOSE C, CHECK AND COMPLETE D OR E

Check ☒ D) At the end of this time, the tenancy will continue on a ~~month-to-month basis, or another fixed length of~~
 D or E ~~time~~, unless the tenant gives notice to end tenancy at least one clear month before the end of the term.
☐ E) At the end of this time, the tenancy is ended and the tenant **must vacate** the rental unit.
This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act.

Reason tenant must vacate (required):

Residential Tenancy Regulation section number (if applicable):

* If you choose E, both the landlord and tenant must initial here

Landlord's
Initials

Tenant's
Initials

The tenant **must move out on or before the last day of the tenancy.**

[reproduced as written]

During the hearing, the tenants confirmed their understanding of the tenancy agreement to be that after July 31, 2021, the tenancy became a month-to-month tenancy as they planned to rent on a long-term basis. The tenants also confirmed that they did not sign a new tenancy agreement since the original tenancy agreement was signed. The tenants hope the tenancy agreement converted to a month-to-month tenancy after the fixed term portion expired.

As indicated above, the landlord crossed out “month-to-month basis, or another fixed length of time” under section 2, “D” (2D) above and replaced that wording with “six or twelve months term.” The parties initialled 2D above and all parties signed the tenancy agreement. The landlord applied for an order of possession as the landlord wants to enforce the fixed term portion of the tenancy agreement, which the landlord writes was extended by 6 months and then was extended to 12 months.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

On December 11, 2017, the Act changed to limit the circumstances in which a fixed term tenancy would end. The parties were advised that modifying the RTB tenancy agreement, which meets the requirements of the Act, does not change the law and that section 5 of the Act applies prevents contracting out of or avoiding the Act as follows:

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.**

[emphasis added]

In addition, in July of 2022, the RTB created *RTB Policy Guideline 30 – Fixed Term Tenancies* (Guideline 30). Under section B, *Vacate clauses*, it states as follows:

B. VACATE CLAUSES

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. **It can only be included in a fixed term tenancy in the following circumstances:**

- **the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term, or**
- **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. The landlord or close family member must occupy the rental unit for at least 6 months. Occupancy can be part time, e.g., weekends only. Failing to occupy the rental unit for at least 6 months may result in the landlord being ordered to pay compensation to the tenant equal to 12 months' rent.

See [Policy Guideline 50: Compensation for Ending a Tenancy](#) for more information

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. The tenant must move out on the date the tenancy ends. The landlord does not need to give a notice to end tenancy or pay one months' rent as compensation as required when ending a tenancy under section 49.

If the tenancy agreement does not require the tenant to vacate the rental unit at the end of the term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month-to-month tenancy¹.

[emphasis added]

Given the above, I find the landlord's attempt under 2D of the tenancy agreement to create a 6 or 12 month fixed term new tenancy agreement by crossing out the words "month-to-month basis, or another fixed length of time" and replacing those words with "six or twelve months term" **is of no effect given that there was no new written tenancy agreement signed between the parties.** In addition, I find that the tenancy converted to a month-to-month tenancy after July 31, 2021 as the landlord cannot end a fixed term tenancy without a signed mutual agreement, **which does not exist in this matter, or** without completing 2E on the tenancy agreement including the reason authorized under section 13.1 of the *Residential Tenancy Regulation*, **which was not completed in this matter.**

The parties were advised during the hearing that given that the tenancy is now a month-to-month tenancy, the landlord does have the ability to issue a Two Month Notice to End Tenancy under section 49 of the Act. If the landlord were to issue such a notice, the tenants have the ability to apply to dispute a 2 Month Notice under section 49(8) of the Act and within the required timeline.

Based on the above, **I dismiss** the landlord's application, **without leave to reapply.**

Pursuant to section 62(3) of the Act, I order that the tenancy has converted to a month-to-month tenancy and shall continue as such until ended in accordance with the Act.

Conclusion

The landlord's application is dismissed without leave to reapply, due to insufficient evidence. The tenancy has converted to a month-to-month tenancy after July 31, 2021.

The tenancy shall continue until ended in accordance with the Act.

The filing fee is not granted as the application has been dismissed.

The decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 8, 2022

Residential Tenancy Branch