



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding Q-14 HOLDINGS C/O MARTELLO PROPERTY SERVICES  
INC and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, FF

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement and to recover the cost of the filing fee.

The tenant, the tenant's advocate (advocate), and the landlord's agents, CD and VC (landlord) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence and the landlord confirmed receipt of the tenant's application.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to the order sought as noted above and recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on March 1, 2022, for a monthly rent of \$1,500 and a security deposit and pet damage deposit of \$750, each, being paid by the tenant to the landlord.

In their application, the tenant wrote as follows:

*At time of application for tenancy(Feb 25th 2022), (agent name) the property administrator for (landlord name) Property Services Inc., claimed that a Mutual Agreement to End Tenancy dated for 1 year (March 1st 2023) was a requirement to proceed with the rental agreement(not a sublet).Confused by this & not up to date on BC rental laws while moving from out of province 72 hrs later I now know this is not legal. The length of tenancy on the agreement is also stated as 6 months but dated for 1 year.*

[Reproduced as written except for anonymizing personal information to protect privacy]

The filed evidence included a written tenancy agreement and a mutual agreement to end the tenancy (Mutual Agreement to End a Tenancy and Non-Disclosure Form).

The relevant part of the tenancy agreement is reproduced as follows:

**4. LENGTH OF TENANCY:**

This fixed term tenancy starts on:

01  
Day

March  
Month

2022  
Year

Landlord  
Initials

Tenants  
Initials  
PN

For a 6 month period ending:

28  
Day

February  
Month

2023  
Year

**AT WHICH POINT THE TENANCY ENDS AND THE TENANT MUST MOVE OUT**

[Reproduced as written]

In support of the tenant's application, the tenant's advocate submitted the following:

The landlord requiring the tenant to sign a mutual agreement is unconscionable and represents an imbalance in power between the two parties.

The advocate further submitted that the landlord has contracted outside of the Act, and the *Residential Tenancy Regulation* (Regulation).

In particular, the landlord required the tenant to sign a mutual agreement to end the tenancy before they allowed the tenancy to begin. The advocate referred to a February 25, 2022, email communication, filed in evidence, between the parties in which the landlord's agent, VC advised the tenant they would "*need the Mutual Agreement to End Tenancy before handing over the keys. It's dated one year from now because that is when the lease ends*".

The advocate submitted that the Act changed in 2017 to prevent a landlord from requiring a tenant to vacate the rental unit at the end of a fixed-term, absent a landlord occupying the rental unit afterwards. As the landlord is a holding company, that would be impossible. The tenant was offered to stay longer, if they signed another fixed-term agreement. If landlords are allowed to require tenants to sign mutual agreements as a condition of tenancy, the intent and language of the Act would be hollow.

In response, the landlord, CD, stated that the purpose of having the tenant sign the mutual agreement was because the building at some point was to undergo renovations and repairs and they wanted flexibility to end the tenancy to begin the work when the landlord was ready.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I find the evidence is clear that the tenant and landlord negotiated and agreed to the terms of a tenancy agreement, as indicated by the document itself, prepared by the landlord, for a tenancy start date of March 1, 2022, monthly rent of \$1,500 and a security deposit and pet damage deposit being required of the tenant. However, the landlord inserted a clause that the tenant must vacate the rental unit at the end of the fixed-term, or in this case, February 28, 2023, without providing any reason. The landlord additionally required the tenant to sign a Mutual Agreement to End a Tenancy and Non-Disclosure Form, before the tenancy began, that they would end the tenancy

by February 28, 2023. This is confirmed by the February 25, 2022 email from landlord's agent VC to the tenant, specifically informing the tenant that they would need the mutual agreement before handing over the keys.

Section 13 of the Act provides requirements for tenancy agreements. In cases of a fixed-term agreement, section 13(2)(iii.1) states the following:

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

Regulation 13.1(2) states as follows:

For the purposes of section 97 (2) (a.1) of the Act [*prescribing circumstances when landlord may include term requiring tenant to vacate*], a circumstance in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term is that the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term.

What this means is, the landlord under the Act must not require the tenant to vacate the rental unit at the end of a fixed-term unless the landlord or close family member intends to occupy the rental unit for residential purposes.

I find Part 1, section 5 of the Act applies, which states 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]

Based on the above, I find the landlord has attempted to contract outside the Act by requiring the tenant to vacate at the end of the fixed-term as a condition of tenancy so that the landlord could make renovations or repairs to the residential property.

As a result, I find their attempt to do so is of no force or effect.

For these reasons, I find the tenant submitted sufficient evidence that the landlord has not complied with the written tenancy agreement, the Act or the regulations.

For this reason, I find it necessary to issues orders in this case, pursuant to section 62(3) of the Act, as follows:

I **ORDER** the Mutual Agreement to End a Tenancy and Non-Disclosure Form signed by the parties on February 25, 2022, requiring the tenant to vacate on February 28, 2023, is void and of no force or effect as I find this document was the landlord's attempt to contract outside the Act as noted above.

I **ORDER** that the requirement to vacate at the end of the fixed term clause in the written tenancy agreement is void and of no force or effect as I find it is contrary to the Act.

I **ORDER** this tenancy convert to a month-to-month tenancy, beginning March 1, 2023, under the same terms and conditions in the tenancy agreement, apart from the requirement to vacate clause, which is void and of no force or effect, until it may otherwise end under the Act.

For the above reasons, I grant the tenant's application. As the tenant's application had merit, I grant the tenant the recovery of the \$100 filing fee. I **authorize** the tenant a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenant should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

I inform the landlord that under section 49.2 of the Act, landlords must apply to the RTB requesting an order of possession for the rental unit in order to accomplish renovations and repairs to the rental unit.

### Conclusion

The tenant's application is granted.

I have issued orders to the landlord.

The tenant is granted a one-time rent reduction in the amount of \$100.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 15, 2023

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Residential Tenancy Branch