



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPB, FFL

Introduction

On October 26, 2022, the landlord applied for (i) an order of possession due to the tenant breaching a fixed term tenancy agreement by failing to vacate the rental unit on the date agreed to under section 55 of the *Residential Tenancy Act* (the “Act”); and (ii) authorization to recover the filing fee under section 72 of the Act.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began October 15, 2021. Rent is \$3850.00 due on the first date of the month. The landlord currently retains a \$1925.00 security deposit and a \$1925.00 pet damage deposit. There is a copy of the written tenancy agreement in evidence.

Under the tenancy agreement, the landlord is listed as 0995969 B.C. LTD. In addition, the tenancy is listed as a fixed term agreement ending on October 31, 2022. While the parties did not make a selection under the section of the tenancy agreement, which requires parties to select what happens at the end of the fixed term tenancy, the parties did initial the section, which acknowledges the tenant must move out on or before the last day of the tenancy:

☒ C) and is for a fixed term ending on

31	OCTOBER	2022
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 time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term.

D or E ☐ 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):

One year term.

Residential Tenancy Regulation section number (if applicable):

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

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

Landlord's Initials: OS	Tenant's Initials: [Signature]
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The landlord affirmed during the hearing that the owner of the rental unit was in fact an individual and not a company. When asked whether there were any additional details the landlord would like to give relating to the identity of the owner, the landlord responded that the landlord had nothing more to add and would only submit that the owner is an individual.

Analysis

Section 13.1 of the *Residential Tenancy Regulation* (the “Regulation”) states that for a landlord to include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term, the landlord must be an individual who, or whose close family member, will occupy the rental unit at the end of the term.

The landlord affirmed during the hearing that the owner of the rental unit is an individual. There is, however, nothing in the documentary evidence or testimony submitted by the landlord to substantiate the identity of the individual owner. In addition, the landlord who is listed in the tenancy agreement and who applied for dispute resolution with the Residential Tenancy Branch are both 0995969 B.C. LTD. Section 13(2)(b) of the Act requires the tenancy agreement to provide the correct legal names of the landlord and tenant. In the absence of evidence that the correct legal name of the landlord is an individual and not 0995969 B.C. LTD., I find the landlord has not proven the landlord is an individual.

Based on the above finding, the vacate clause in the tenancy agreement is not enforceable because it contravenes section 13.1 of the Regulation. Therefore, the landlord’s application is dismissed.

As the landlord's application is dismissed, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

The landlord's application 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 *Residential Tenancy Act*.

Dated: March 23, 2023

Residential Tenancy Branch