



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      Landlord: **OPB, OPM, OPN**  
                              Tenants: **OLC, FFT**

### Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (Act) for:

1. An Order of Possession because the tenancy agreement states the Tenant will vacate the rental unit at the end of the fixed term under Section 55(2)(c) of the Act;
2. An Order of Possession because a mutual agreement to end the tenancy was signed under Section 55(2)(d) of the Act; and,
3. An Order of Possession because the Tenant has given written notice to end the tenancy under Section 55(2)(a) of the Act.

This hearing also dealt with the Tenants' application pursuant to the Act for:

1. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement under Section 62(3) of the Act; and,
2. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on February 10, 2023, Canada Post Tracking Number on cover sheet of decision, the Tenants confirmed receipt, deemed served on February 15, 2023;
- the Landlord's evidence package served by registered mail on April 13, 2023, Canada Post Tracking Number on cover sheet of decision, the Tenants confirmed receipt, deemed served on April 18, 2023; and,
- the Tenants' Notice of Dispute Resolution Proceeding package and evidence served by registered mail on February 16, 2023, Canada Post Tracking Number on cover sheet of decision, the Landlord confirmed receipt, deemed served on February 21, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession because the tenancy agreement states the Tenant will vacate the rental unit at the end of the fixed term?
2. Is the Landlord entitled to an Order of Possession because a mutual agreement to end the tenancy was signed?
3. Is the Landlord entitled to an Order of Possession because the Tenant has given written notice to end the tenancy?

Tenants:

1. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
2. Are the Tenants entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on May 1, 2021 and a second fixed term tenancy on May 1, 2022. The second fixed term ended on April 30, 2023, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,891.70 payable on the first day of each month. A security deposit of \$1,417.50 and a pet damage deposit of \$1,417.50 were collected at the start of the tenancy and are still held by the Landlord.

The Landlord stated she had the Tenants sign a mutual agreement to end tenancy when they signed their second fixed term tenancy agreement. She stated she wanted them to move after one year because the maturity date for her mortgage was coming due and with increased property taxes and inflation, the Landlord does not feel she should have to pay these increased costs. The Landlord's mortgage maturity date is July 18, 2023, and she stated her mortgage rate will go up from 2% to 6.99% on that date. The Landlord's maintenance fees have gone up, and she testified that she knows property taxes will also go up.

The Landlord stated she issued a 2% rent increase on her Tenants. The Tenants told her that they are going to go month-to-month because they do not know when they will want to leave. Now, she wants to use her mutual agreement to end tenancy. She said they do not have a good relationship, they do not want to talk to her, and she does not trust them. The Landlord said she may have to sell the condo.

The Tenants said the mutual agreement to end tenancy was signed on the same date as the new tenancy agreement. The Tenants said there was no discussion of us ending our tenancy. The mutual agreement to end was just attached to the tenancy agreement, and they were told where to sign.

In December 2022, the Tenants said the Landlord started talking about increasing the rent above the allowable limits. The Tenants argued that was when the Landlord said, "*if you don't agree, I have this agreement.*" That was when they were alerted to the mutual agreement to end tenancy, they said they had not even looked at it.

On December 18, 2022, the Landlord emailed the Tenants a copy of the signed mutual agreement to end tenancy. She wrote:

...

*I am not sure if you already have and took a picture of the Mutual Agreement for Ending Tenancy (beside lease agreement) which we were signed together one year ago. Please see the attachment.*

*As I mentioned I would like you guys stay in my condo after April 30/2023. However, please understand my situation due to inflation, maintenance fee change, tax property, high mortgage interest rate by bank of Canada. We need to work out this matter together if you want to stay after April. ... Can you imagine Bank of Canada increased interest rate 7 times this year for mortgages. I am sure you are aware of inflation and prices.*

...

On December 20, 2022, the Tenants agreed to the 2% rental increase because this was within the allowable limits of rent increases in BC. The Tenants testified that the Landlord wanted to increase their rent over the 2% limit, and she told the Tenants she was going to use the mutual agreement to end tenancy. After this point of time, the Tenants said their relationship went sour.

The Landlord replied that in December 2022, she said she wanted to remind the Tenants that they filled out the mutual agreement and they needed to talk “*about my problems*”. The purpose for the Landlord including the mutual agreement was, she said, “*with a fixed term, usually they put mutual agreement*”. She said the Tenants insisted on a one-year fixed term tenancy, then she wanted them to go because “*my mortgage is coming up, my tax property is going to go up, so that’s why I put the mutual agreement.*”

The Landlord said the RTB gave her the mutual agreement to end tenancy form and she said the RTB told her with a fixed term tenancy, that she can use the mutual agreement to end the tenancy.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

***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.*

Residential Tenancy Policy Guideline #30-Fixed Term Tenancies (PG#30) is intended to help parties understand issues that are likely to be relevant in their fixed term tenancy agreements. PG#30 deals with vacate clauses, how to end a fixed term tenancy, how to end a fixed term tenancy using a mutual agreement to end tenancy form, and other matters.

When using a vacate clause, PG#30 states, *“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.”* There are limited circumstances that permit a landlord to use a vacate clause.

The Landlord attached or included an old copy of a mutual agreement to end tenancy to her fixed term tenancy agreement. She testified she did this because she wanted her Tenants to leave at the end of the fixed term. She knew that her mortgage was up for renewal, and she anticipated an increase in mortgage rates. She also stated there were increases in maintenance fees for the residential property, and she anticipated increased property taxes. She said it is normal practice to attach a copy of the mutual agreement to end tenancy to a fixed term tenancy agreement.

The Tenants submitted that they were not alerted to the attached mutual agreement to end tenancy at the back of the second fixed term tenancy agreement. They were told where to sign, and they listened to those instructions and signed the agreement. I expect they will not do this again.

The current iteration of the Mutual Agreement to End a Tenancy form #RTB-8 is dated 2022/04. This copy of this agreement has bright yellow highlighted text at the top that alerts the parties that *“Neither a Landlord nor a Tenant is under any obligation to sign this form.”* The Landlord’s copy of the mutual agreement to end tenancy is dated 2014/10, and this copy does not include the current warnings about its effect. I find it is not common practice, or a conscionable practice, for those parties entering fixed term

tenancy agreements, to also include a mutual agreement to end tenancy form that must be signed.

The parties' tenancy agreement did not include a vacate clause. The tenancy agreement states that, "*The Landlord and Tenant may mutually agree in writing to end this tenancy agreement at any time*"; however, I find there was no meeting of the minds between the two parties that this tenancy would end at the end of the fixed term. The mutual agreement to end tenancy, was not a shared understanding between both parties.

I find the Landlord's use of the mutual agreement to end tenancy form was her way to avoid or contract out of the Act or the regulations. Under Section 5(2) of the Act, any attempt to avoid or contract out of the Act or the regulations is of no effect. I dismiss all the Landlord's claims.

I Order the Landlord to comply with the Act and the regulations regarding her conduct of handling a fixed term tenancy. The Landlord must also be aware of the RTB's Policy Guidelines which are easily accessible online.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, deduct \$100.00 from one month's rent due to the Landlord.

### Conclusion

The Landlord's application is dismissed.

I Order the Landlord to comply with the Act and the regulations regarding her conduct of handling a fixed term tenancy.

The Tenants may deduct \$100.00 from one month's rent to recover their application filing fee.

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: June 15, 2023

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Residential Tenancy Branch