



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPB**

This hearing was convened as a result of the Landlord's application for dispute resolution (Application) under the *Residential Tenancy Act* (Act) for:

- an Order of Possession for breach of a vacate clause that states the Tenant will vacate the rental unit at the end of the fixed term pursuant to section 55(2)(c).

The Tenant did not attend this hearing scheduled for 11:00 am. I left the teleconference hearing connection open for the entire hearing, which ended at 11:32, in order to enable the Tenant to call into this teleconference hearing. An agent for the Landlord (HX) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding (NDRP). I also confirmed from the teleconference system that HX and I were the only ones who had called into this teleconference.

HX stated the Landlord served the NDRP and the Landlord's evidence (NDRP Package) on the Tenant in-person on March 23, 2023. HX submitted into evidence a copy of a Proof of Service on Form RTB-55 that was signed by the Tenant to acknowledge he received the NDRP Package. Based on the undisputed testimony of HX, I find the Tenant was served with the NDRP Package in accordance with the provisions of sections 88 and 89 of the Act.

Issue to be Decided

Is the Landlord entitled to an Order of Possession for breach of an agreement by the Tenant to vacate the rental unit?

Background and Evidence

While I have turned my mind to all 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 principal aspects of the Application and my findings are set out below.

HX submitted into evidence a copy of a signed tenancy agreement, dated October 16, 2022, between the Landlord and Tenant. The tenancy agreement states the tenancy commenced on November 1, 2022, for a fixed term ending on April 30, 2023, with rent of \$1,300.00 payable on the first day of each month. The Tenant was required to pay a security deposit of \$650.00 by October 16, 2022. Based on the undisputed testimony of HX, I find there was a residential tenancy between the Landlord and Tenant and that I have jurisdiction to hear and adjudicate the Application.

HX referred to paragraph 2(E) of the tenancy agreement that states:

Check D or E ☐ 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.

☒ 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): OWNER'S PERSONAL USE

Residential Tenancy Regulation section number (if applicable):

* 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 	Tenant's Initials 
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HX stated the owner of the residential property is the Landlord. HX stated the Tenant has not vacated the rental unit even though the fixed term of the tenancy ended on April 30, 2023. HX stated the Tenant told the Landlord he is looking for another place to live.

Analysis

Section 44 of the Act states that, in the case of a fixed term tenancy, the tenancy may end if the agreement is one that requires the tenant to vacate the rental unit at the end of the term under the circumstances prescribed under section 97(2)(a.1) of the Act. Section 97(2)(a.1) of the Act allows the Lieutenant Governor in Council to make regulations prescribing the circumstances in which a landlord may include a fixed term tenancy agreement a requirement that the tenant vacate rental unit at the end of the term.

Section 13.1 of the Residential Tenancy Regulation (Regulation) states that, for the purposes of section 97(2)(a.1) of the Act, the circumstances in which the landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term are that (a) the landlord is an individual and being the landlord or a close relative and (b) the landlord or a close family member of that landlord intends in good faith, at the time of entry into the tenants agreement, to occupy the rental unit at the end of the fixed term.

In the case before me, section 2(A) of the tenancy Agreement states the tenancy has a fixed term ending April 30, 2023. Section 2(E) of the tenancy agreement states the Tenant must vacate the rental unit at the end of the fixed term. Section 2(E) states the reason the Tenant must vacate the rental unit is for "Owner's Personal Use". Section 2(E) has been initialed by both the Landlord and Tenant. Although the Landlord did not insert the section of the Regulation the Landlord was relying on to end the tenancy in the box appearing in section 2(E), immediately above this box is the wording "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. HX stated the Landlord is the owner. Based on the undisputed testimony of HX, As such, I find the Landlord is an individual for the purposes of section 13.1 of the Regulation.

I find the Tenant knew or ought to have known that the Landlord was the owner of the residential property. I find that the failure of the Landlord to insert "section 13.1" in the box in section 2(E) of the tenancy agreement is not a fatal error that invalidates the requirement that the Tenant vacate the rental unit at the end of the fixed term of the tenancy on April 30, 2022. Based on the undisputed testimony of HX, I find, on a balance of probabilities, that the Landlord has proven the provisions of paragraph 2(E) of the tenancy agreement are enforceable against the Tenant. As such, I grant the Landlord an Order of Possession pursuant to section 55(2)(c) of the Act. The Tenant is required to deliver vacant possession of the rental unit to the Landlord by 1:00 pm, not later than **2 days** after being served with this Order by the Landlord. Pursuant to section 68(2)(a) of the Act, I find the tenancy ended on June 26, 2023.

The Landlord is reminded that section 51.1 of the Act states:

51.1(1) Subject to subsection (2) of this section, if a fixed term tenancy agreement includes, in a circumstance prescribed under section 97 (2) (a.1), a requirement that the tenant vacate the rental unit at the end of the term, the landlord must pay the tenant an amount that is the

equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the date the tenancy ended, to satisfy the prescribed circumstance, or
- (b) the rental unit is not used in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.

Conclusion

The Tenant is ordered to deliver vacant possession of the rental unit to the Landlord by 1:00 pm, not later than **2 days** after being served with this Order by the Landlord. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: June 28, 2023

Residential Tenancy Branch