



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, 0, FF

### Introduction

The tenant applies regarding the ending of her fixed term tenancy. She has not indicated or claimed any particular relief in her application.

The landlord seeks an order of possession pursuant to a fixed term tenancy agreement that requires the tenant to vacate the premises at the end of the fixed term.

Both parties attended the hearing, the landlord by his agent Mr. H., and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show that the tenancy is a fixed term tenancy requiring the tenant to leave at its end? Was the tenant pressured to sign the agreement or put under duress to do so to the point of rendering its requirement that she vacate at the end of the term unenforceable?

### Background and Evidence

The rental unit is a four bedroom house. The tenant is the occupant. The respondent Mr. P.M., her brother, signed the most recent tenancy agreement as a co-tenant to act as guarantor of her obligations. He does not reside there. Use of the word “tenant” in this decision is meant to refer to Ms. D.M..

The tenant first took possession in September 2013 under a one year agreement with Mr. P.M. that required him (and thus her) to vacate at its end.

The tenant says that back then she asked the landlord to uncheck the mandatory move out box in the tenancy agreement but he refused. She testifies that she was under duress to sign the agreement because had only seven days to find new accommodation.

As the one year term drew to an end, the tenant requested an extension. The landlord agreed, but only for a six month term. It appears that a new fixed term agreement was created, ending February 28, 2015, again requiring the tenant to vacate at the end. The landlord indicated that only a six month term would be possible because the home might go for sale in the spring of 2015.

The tenant testifies that she accepted this new fixed term tenancy hoping that the landlord would extend the tenancy again. She says she decided to “take a chance” and “take the risk” as she knew of another person who was or had been a long term tenant of the landlord.

Once again in the spring the tenant requested and obtained a six month extension, on the same terms, to September 2015.

In September 2015 the parties again agreed to another fixed term, the most current agreement. Again it was for six months to February 29, 2016 and required the tenant to vacate at the end of the term.

In January 2016 the tenant attempted to obtain another extension but the landlord refused.

The landlord says the tenancy has ended, the agreement says the tenant must vacate, she hasn't and so he should have an order of possession.

The tenant says that there has been a flood at the premises and that the drain tile needs replacing as well as some plumbing repairs. She considers that the landlord wants her to leave because it is necessary for him to have “vacant possession” in order to carry out the repairs. She argues that vacant possession is not required to carry out the repairs.

### Analysis

First, the question of whether or not the landlord needs vacant possession of the premises to carry out repairs, is not an issue pertinent to this dispute.

It can be a central question to the validity of a two month Notice to End Tenancy under s. 49 of the *Residential Tenancy Act* (the “RTA”) where the landlord claims to require vacant possession to repair or renovate, but no such Notice has been issued by the landlord.

The written tenancy agreement is clear that the tenancy ends on February 29, 2016 and that the tenant must move out of the premises. The agreement is signed by both the tenant and her brother and each have initialled the particular provision requiring them to move.

There is no ambiguity about that clause.

There is no suggestion that the landlord is imposing the series of fixed term tenancies in order to avoid the rent increase restrictions imposed by the *RTA* or to sidestep the limited grounds permitted a landlord for ending a tenancy for cause.

The tenant’s argument that she was signing the agreement under duress has been greatly weakened by the fact that she has signed a series of such agreements and decided to “take a chance” that the landlord would agree to extend each fixed term.

It should be noted that the tenant is under duress. She has a young family and “homestay” guests who are actively engaged in this particular community. Uprooting them at this time of year will no doubt create a significant level of stress and disappointment in the household. Yet that duress has not been caused by the landlord.

I find that there was no significant pressure or force by the landlord on the tenant to sign the most recent tenancy agreement.

The tenant must live by the agreement she signed. This tenancy has ended on February 29, 2016, the tenant agreed to vacate the premises by then and the landlord is legally entitled to vacant possession. I grant the landlord an order of possession effective March 31, 2016.

It is hoped that the landlord will acknowledge the effect of such an untimely move on the tenant’s children and her “homestay” guests and will provide the tenant with an extension to the end of the school year. However, that is not something that I can order the landlord to do in the circumstances.

Conclusion

The tenant's application is dismissed.

The landlord's application for an order of possession is allowed. As he has been successful, I authorize him to recover the \$100.00 filing fee for this application from the security deposit he holds.

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 12, 2016

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Residential Tenancy Branch

