

30. Fixed Term Tenancies

December 2016

This Policy Guideline is intended help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

A. DEFINITION OF A FIXED TERM TENANCY

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date. At least one Court has interpreted "predetermined expiry date" to include a provision in the tenancy agreement that the tenancy will terminate as a result of a specified occurrence or circumstance.

B. REQUIREMENTS FOR FIXED TERM TENANCY AGREEMENTS

Section 13 of the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) sets out the requirements for tenancy agreements. Fixed term tenancy agreements must state the date the tenancy ends, and whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date. If the parties do not agree that the tenant must vacate the rental unit at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month-to-month tenancy.

C. ENDING A FIXED TERM TENANCY

During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties, except under section G below (Early Termination for Family Violence or Long-Term Care).

A landlord may end the tenancy if the tenant fails to pay the rent when due by serving a Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30) on the tenant. Alternatively, a landlord may end the tenancy for cause by serving a One Month Notice to End Tenancy for Cause (form RTB-33) on the tenant.

A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

A landlord cannot give notice for landlord's use of property that will end a fixed term tenancy before the end of the fixed term. If a landlord wishes to end the tenancy for landlord's use of property, which may include use by the purchaser of the property, the landlord must serve a proper Two Month Notice to End Tenancy for Landlord's Use of Property (form RTB-32) on the tenant. Before a landlord can serve notice for the purchaser's use of the property, the landlord must have an agreement in good faith to sell the property, all conditions of the sale must have been satisfied and the purchaser must ask the landlord, in writing, to give notice to end the

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tenancy. The effective date of that Notice will be two months from the end of the month in which the Notice was served but in any case not before the end of the fixed term. The tenant may not, during the fixed term, give the landlord a minimum 10 day notice to end the tenancy¹ on a date that is earlier than the effective date of the landlord's notice.

A tenant may not use the one month notice provisions of the Legislation to end the tenancy prior to the end of the fixed term except for breach of a material term by the landlord or under section G below (Early Termination for Family Violence or Long-Term Care). Any other one month notice will take effect not sooner than the end of the fixed term.

D. RENEWING A FIXED TERM TENANCY AGREEMENT

A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term.

E. WHEN A FIXED TERM TENANCY BECOMES A MONTH-TO-MONTH TENANCY

If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month-to-month tenancy on the same terms.

If the tenant wishes to vacate the premises at the end of the fixed term, but is not otherwise required to vacate the premises at the end of the fixed term, the tenant must give notice of intent to vacate the premises in the rental period prior to the rental period in which the tenant wishes to vacate the premises and not less than one month prior to the end of the fixed term. For example, if the fixed term expired on November 30th, the tenant must ensure the landlord receives the tenant's notice to end the tenancy by October 31st.

F. EARLY END TO A FIXED TERM TENANCY BY AGREEMENT

A landlord and tenant may agree in writing to end a fixed-term tenancy before its expiry date.

G. EARLY TERMINATION FOR FAMILY VIOLENCE OR LONG-TERM CARE

Under section 45.1 of the *Residential Tenancy Act*, a tenant may give one month's notice to end a fixed-term tenancy early without financial penalty when fleeing family violence or when the tenant has been assessed as requiring long-term care or has been accepted into a long-term care facility. The notice must be accompanied by a confirmation statement that is completed by a person who is eligible to do so under the Residential Tenancy Regulation².

¹ *Residential Tenancy Act*, s. 50; *Manufactured Home Park Tenancy Act*, s. 43.

² Residential Tenancy Regulation, s. 39 and s. 40.

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A landlord may not apply for dispute resolution to dispute the tenant’s eligibility to end to end their tenancy. A landlord may apply for dispute resolution to challenge the eligibility of the third-party verifier.

H. ORDERS OF POSSESSION AND FIXED TERM TENANCIES

In addition to the procedures under the Legislation for terminating a tenancy for cause or for non-payment of rent, a landlord may apply for an Order of Possession in respect of a fixed term tenancy when any of the following occur:

- the tenant has given proper notice to the landlord as a result of a material breach by the landlord;
- the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- the landlord and tenant enter into a written agreement specifying that the tenancy agreement shall end on a specified date.

I. RENT INCREASES AND FIXED TERM TENANCIES

The rent increase provisions of the Legislation apply to fixed term tenancy agreements.

If the parties so agree, the fixed term tenancy agreement may specify that the rent shall continue to be the same amount throughout the fixed term. The parties may not, however, agree that the rent will increase during the fixed term as this would potentially contravene the justified rent increase provisions of the Legislation.

J. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
All	am	Reformatted for consistency with other guidelines	05-Dec-2016
B,C,E	am	Amended for clarity	05-Dec-2016
G	new	Addresses regulatory amendment	05-Dec-2016

Change notations

am = text amended or changed

del = text deleted

new = new section added