

## 30. Fixed Term Tenancies

Dec-17

This policy guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and rules of statutory interpretation, where appropriate. This guideline is also intended to help the parties to an application understand the 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 policy guideline may be revised and new guidelines issued from time to time.

### A. LEGISLATIVE FRAMEWORK

Section 1 of the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) defines a fixed term tenancy as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. In other words, a fixed term tenancy has a definite commencement date and expiry date. Neither party may end a fixed term tenancy early, except under the circumstances described in section C of this guideline.

Effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term if:

- The tenancy agreement is a sublease agreement<sup>1</sup>; or
- The tenancy is a fixed term tenancy in circumstances prescribed in [section 13.1](#) of the Residential Tenancy Regulation<sup>2</sup>.

Transitional provisions in the Legislation apply this change retrospectively<sup>3</sup>. If a fixed term tenancy agreement is currently in effect and contains a clause that requires a tenant to vacate the rental unit or manufactured home site on a specified date, that clause is no longer enforceable in most circumstances.

The Legislation allows for limited circumstances where a vacate clause in a tenancy agreement is enforceable<sup>4</sup>:

- The tenancy agreement is a sublease agreement;
- The tenancy is a fixed term tenancy in circumstances prescribed in [section 13.1](#) of the Residential Tenancy Regulation; or
- If one of the following occurred before October 26, 2017<sup>5</sup>:
  - (i) the landlord entered into a tenancy agreement, to begin after the expiry of an existing tenancy agreement that includes a requirement to vacate the rental unit<sup>6</sup>, with a new tenant for the rental unit, or
  - (ii) the director granted an order of possession to the landlord on the basis of a requirement to vacate the rental unit in an existing tenancy agreement.

<sup>1</sup> *Residential Tenancy Act* s. 1; *Manufactured Home Park Tenancy Act* s.1

<sup>2</sup> RTA, s. 13; MHPTA s. 13

<sup>3</sup> RTA, s. 104.3; MHPTA, s. 96.2

<sup>4</sup> RTA s. 44 (1) (b) and (g), s. 55 (2) (c) and (c.1); MHPTA s. 37 (1) (b) and (g), s. 48 (2) (c) and (c.1)

<sup>5</sup> Date of First Reading of [Bill 16, Tenancy Statutes Amendment Act, 2017](#) in the Legislative Assembly

<sup>6</sup> Similar provisions exist for manufactured home park tenancies



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### B. REQUIREMENTS FOR FIXED TERM TENANCY AGREEMENTS

The Legislation<sup>7</sup> sets out the requirements for tenancy agreements. A fixed term tenancy agreement must state the date the term ends.

If a tenancy agreement requires the tenant to vacate the rental unit at the end of the fixed term, the reason must be indicated on the agreement and both parties must have their initials next to this term in the agreement in order for it to be enforceable.

A tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of the fixed term if:

- The tenancy agreement is a sublease agreement<sup>8</sup>; or
- The tenancy is a fixed term tenancy in circumstances prescribed in [section 13.1](#) of the Residential Tenancy Regulation<sup>9</sup>.

If the tenancy agreement does not require the tenant to vacate the rental unit at the end of the term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month-to-month tenancy<sup>10</sup>.

### 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, or 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

<sup>7</sup> RTA, s. 13; MHPTA, s. 13

<sup>8</sup> RTA s. 1; MHPTA s.1

<sup>9</sup> RTA, s. 13; MHPTA s. 13

<sup>10</sup> RTA s. 41 (3); MHPTA s. 37 (3)



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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 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 tenancy<sup>11</sup> 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.

A tenant who wants to end the tenancy at the end of the fixed term, must give one month's written notice. For example, if the fixed term expires on June 30<sup>th</sup>, the tenant must ensure the landlord receives the tenant's notice to end the tenancy by May 31<sup>st</sup>.

#### 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. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent Increases are met.

#### E. 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. A Mutual Agreement to End Tenancy (form RTB-8) is preferred but not required.

#### F. 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 Regulation<sup>12</sup>.

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.

<sup>11</sup> RTA s. 50; MPTA s. 43.

<sup>12</sup> Residential Tenancy Regulation, s. 39 and s. 40.



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#### G. 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 for one of the following reasons:
  - the tenancy agreement is a sublease agreement<sup>13</sup>; or
  - the tenancy is a fixed term tenancy in circumstances prescribed in [section 13.1](#) of the Residential Tenancy Regulation<sup>14</sup>;
- the landlord and tenant have entered into a written agreement specifying that the tenancy agreement shall end on a specified date.

#### H. RENT INCREASES AND FIXED TERM TENANCIES

A rent increase between fixed term tenancy agreements with the same tenant for the same unit is subject to the rent increase provisions of the Legislation, including requirements for timing and notice. To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant’s written agreement or an order from an arbitrator. If the tenant agrees to an additional rent increase, the landlord must issue a Notice of Rent Increase along with a copy of the tenant’s signed agreement to the additional amount. The tenant must be given three full months’ notice of the increase.

#### I. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
A	new	Referenced new legislative framework	2017-12-11
B	am	Updated to reflect legislative change	2017-12-11
D	am	Updated to reflect legislative change	2017-12-11
F	am	Amended to reference Mutual Agreement to End Tenancy form	2017-12-11
G	am	Updated to reflect legislative change	2017-12-11
H	am	Amended for clarity	2017-12-11

Change notations

am = text amended or changed

del = text deleted

new = new section added

<sup>13</sup> RTA s. 55 (2) (c.1) ; MHPTA s.48 (2) (c.1)

<sup>14</sup> RTA s. 55 (2) (c) ; MHPTA s.48 (2) (c)