



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession based on the Tenant's notice to end tenancy and to recover the cost of the filing fee from the Tenants for the cost of this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Did the Tenant end the tenancy in accordance it with the *Residential Tenancy Act*?
2. If so, is the Landlord entitled to possession of the unit?

### Background and Evidence

The parties entered into a month to month tenancy agreement that began on August 2, 2011. The Tenants took possession of the unit on approximately August 5, 2011. Rent is payable on the first of each month in the amount of \$725.00 and the Tenants paid \$362.50 as the security deposit.

The Landlord affirmed that on approximately August 10, 2011 he received a phone call from the female Tenant advising she had moved out of the unit because the male Tenant had started drinking again. She informed the Landlord that the male Tenant becomes violent when he drinks and that the Landlord should have security with him if he approaches the male Tenant.

The Landlord advised that on August 12, 2011 he found two envelopes taped to his door, one marked to the male Tenant's attention and the other was marked for the Landlord and included a copy of the female Tenant's notice to end tenancy.

The Tenant affirmed that there were problems between her and the male Tenant because of the male Tenant's drinking. She stated that she could not remember calling the Landlord before August 12, 2011 and said she did not think she would have told the Landlord she was moving out. She claimed that her brother, from out of town, wrote the notice to end her tenancy. She confirmed she did not submit evidence to support it was in fact her brother who wrote the notice. When asked direct questions about what was said during her telephone conversations with the Landlord the female Tenant continued to answer saying she could not remember and then at one point she stated that she did not move out as she only took her clothes with her and none of her other possessions.

The Landlord confirmed he accepted payment for September "use and occupancy only" and advised he had a telephone conversation with the female Tenant whereby she requested that the Landlord close his file with the *Residential Tenancy Branch*. The Landlord stated that it was during this conversation that he made it clear to the Tenant that he would not be closing the file and he would be continuing with his request for an Order of Possession. He confirmed he wished to have an Order of Possession effective September 30, 2011.

### Analysis

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their testimony. In this case, the Tenant held the burden to prove she did not provide the written notice to end her tenancy, a copy of which was provided in documentary evidence. Accordingly, the only evidence before me that the Tenant did not end her tenancy was verbal testimony and I find the disputed verbal testimony insufficient to meet her burden of proof.

I favor the evidence of the Landlord, who stated the female Tenant called him on approximately August 10, 2011 to advise the male Tenant had started drinking and she had vacated the property, over the evidence of the female Tenant who stated she could not remember telling the Landlord she had moved out. I favored the evidence of the Landlord over the Tenant, in part, because the Landlord's evidence was forthright and credible and supported by a written notice to end tenancy.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Tenant's explanation that she did not end her tenancy to be improbable. Given that written notice to end the tenancy was provided only a day or two after the Tenant first called the Landlord makes it reasonable to conclude the female Tenant was acting in accordance with the Act to end her tenancy as soon as possible to limit further liability to pay rent for this rental unit. I find that the Tenant's explanation that she simply could not remember what was said during conversations that happened less than five weeks earlier although she could recall conversations she had with the building owner and her brother around the same time period, to be improbable.

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

If one tenant moves out and gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Section 45 (1) of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 (2) of the Act provides that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In this case the notice to end tenancy was received by the Landlord August 12, 2011, and rent is payable on the first of each month therefore the effective date of the Notice would be September 30, 2011.

For all the aforementioned reasons, I find this tenancy will end as of September 30, 2011; therefore I grant the Landlord an Order of Possession on that date.

The Landlord has been successful with his application; therefore I award recovery of the \$50.00 filing fee.

### Conclusion

The Landlord's decision will be accompanied by an Order of Possession effective September 30, 2011 at 1:00 p.m. after service upon the Tenant. This Order is legally binding and must be served upon the Tenants.

The Landlord may withhold the one time monetary award of **\$50.00** from the Tenants' security deposit.

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: September 26, 2011.

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Residential Tenancy Branch