



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNDC, FF, O

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72; and
- other purposes, described in his application for dispute resolution as a request to end this tenancy and to obtain an Order of Possession because the tenants had not complied with the terms of the parties' written agreement to end this tenancy in accordance with section 44(1)(c)n of the *Act*.

The tenants did not attend this hearing, although I waited until 1:46 p.m. in order to enable them to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. He testified that the tenants were given their copy of the Mutual Agreement to End Tenancy form (the Mutual Agreement) they signed on January 21, 2012. The landlord testified that he sent the tenants copies of his dispute resolution hearing package by registered mail on February 17, 2012. He provided the Canada Post Tracking Number to confirm this mailing. In accordance with section 90 of the *Act*, I find that the tenants were deemed to have been served with the landlord's dispute resolution hearing package on February 22, 2012, the fifth day after their mailing. I am satisfied that the landlord has served the above documents to the tenants in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to an end to this tenancy and an Order of Possession on the basis of the tenants' failure to comply with the terms of a Mutual Agreement form they signed on January 21, 2012? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This periodic tenancy commenced on March 1, 2010. Monthly rent was originally set at \$950.00, but this was subsequently reduced to \$750.00. Monthly rent is payable in advance on the first of each month.

On January 21, 2012, the landlord and the tenants signed a Mutual Agreement to End a Tenancy, Residential Tenancy Branch Form #RTB-08 (2011/03), entered into written evidence by the landlord. In the Mutual Agreement, the tenants committed to vacate the rental premises by midnight on February 29, 2012.

The landlord said that he returned all of the tenants' \$475.00 security deposit to them on January 21, 2012 in anticipation of the tenants' departure from the rental premises in accordance with their signed Mutual Agreement. The landlord also testified that he did not charge the tenants rent for February 2012 as a way of enabling them to find alternate accommodations.

The landlord applied for dispute resolution in order to obtain an Order of Possession to be used if the tenants did not end their tenancy in accordance with their Mutual Agreement to do so. The landlord testified that one of the tenants, Tenant JE, has vacated the rental premises, but the other tenant, Tenant AJ, remains in the rental premises, contrary to the terms of the Mutual Agreement. The landlord also applied for a monetary award of \$750.00 for potential rental loss in March 2012. He said that he submitted this part of his application in the event that the tenants remained in the rental unit.

### Analysis

Section 44 (1) of the *Act* outlines the ways a tenancy can be ended. In accordance with section 44(1)(c) of the *Act*, one of the permitted ways to end a tenancy is if "the landlord and tenant agree in writing to end the tenancy." In this case, the landlord has entered undisputed written evidence that the parties signed a Mutual Agreement, requiring the tenants to vacate the rental premises by midnight on February 29, 2012.

As the premises have not been vacated and yielded to the landlord, I find in accordance with section 55(2)(d) and 55(3) of the *Act* that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed evidence provided by the landlord, I am satisfied that the tenants have not paid rent for March 2012. The landlord testified that the tenants'

failure to yield vacant possession of the rental premises to him has caused significant disruption to his plans and those of his family to occupy the premises themselves. Based on the Mutual Agreement, he was expecting to take possession himself and move members of his family into the rental unit during March 2012. Under these circumstances, I find that the landlord is entitled to a monetary award of \$750.00 for unpaid rent owing for March 2012.

As the landlord has been successful in this application, I allow the landlord to recover his \$50.00 filing fee from the tenants.

#### Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the amount of \$800.00 in the landlord's favour which allows the landlord to recover unpaid rent for March 2012 and his filing fee from the tenant(s). The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 06, 2012

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Residential Tenancy Branch