



# 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 seeking to end the tenancy based on a purported term in the tenancy agreement stating that the tenancy expires on May 15, 2012 at which time the tenant must vacate the property.

Both parties appeared and gave testimony.

### **Preliminary Matter: Service of Respondent's Evidence**

The landlord had served the Application for dispute Resolution dated May 15, 2012 on the tenants. The landlord acknowledged that he did not serve the remainder of his documentary evidence on the tenants prior to the hearing.

The tenants submitted some documentary evidence to dispute the landlord's application. However, this evidence was only received by the landlord on Saturday 2 days prior to the hearing on Monday June 4, 2012.

The Residential Tenancy Rules of Procedure, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding. I find that the applicant landlord did not comply with this requirement.

Rule 4 states that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents or other evidence the respondent intends to rely upon, must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding. However, if the date of the dispute resolution proceeding is scheduled too soon and the applicant's Notice of Hearing and application package is served on the respondent too close to allow the respondent to meet the five (5) day requirement, then all of the respondent's evidence must be received by the Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

I find that, the applicant landlord's additional evidence was not served on the tenant and, as a result, it cannot be considered. However, verbal testimony from the landlord was accepted and considered.

With respect to the respondent tenant's evidence, I find that this evidence was served on the landlord two days before the hearing. That being said, the "*Definitions*" portion of the Rules of Procedure states that when the number of days is qualified by the term "*at least*" then the first and last days must be excluded. I find that the documents served to the landlord on Saturday June 2, 2012, for a hearing taking place on June 4, 2012, were received too late to comply with the Act.

Given the above, I find that the tenant's documentary evidence cannot be considered. However, verbal testimony from the tenant was permitted and taken into account.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence is; whether or not the landlord is entitled to an Order of Possession based on a fixed term in the tenancy agreement.

The burden of proof is on the landlord.

### **Background and Evidence**

The landlord testified that the tenancy began on or around April 4, 2012 with rent of \$1,200.00 and a security deposit of \$600.00 was paid. The landlord testified that all parties agreed from the outset that the duration of the tenancy was for a very brief fixed term ending on May 15, 2012, as the house was in the process of being sold. The landlord stated that the tenants signed and initialed a fixed-term tenancy agreement to expire on May 15, 2012.

The tenant stated that the landlord only delivered the written tenancy agreement *after* they had moved in and their initials were forged on the documents. According to the tenant, they felt entitled to stay in the unit beyond May 15, 2012. The tenant stated that they did not pay rent for the month of May 2012 as they knew that they were entitled to receive the equivalent of one-month rent under the Act based on the fact that the landlord was terminating the tenancy for landlord's use being since it had been sold. The tenant stated that they do however agree to vacate the unit on June 16, 2012 because they have successfully secured another residence for that date.

The landlord was in agreement with being issued an Order of Possession effective June 16, 2012. However, the landlord pointed out that the tenants would still owed one-half a month's rent applicable to the month of June 2012.

A mediated discussion ensued and the parties agreed that the landlord could retain the tenant's \$600.00 security deposit in lieu of rent owed for the period from June 1, 2012 until June 16, 2012.

The tenant was concerned about the fact that the landlord's neglect of certain facilities during the tenancy and violations of the Act and agreement had devalued their tenancy and they feel entitled to be compensated through a retro-active rent reduction. As today's hearing was to deal solely with the landlord's application, I found that the tenants claims could not be heard nor considered during the proceedings. However, the tenants are at liberty to make their own application if they wish to pursue a claim for compensation for damages or loss under the Act or agreement in future

With respect to the matter before me, I find that the landlord will be issued with an Order of Possession effective June 16, 2012 and will also be granted an order to retain the tenant's \$600.00 security deposit for rent owed for the half-month in June 2012.

### **Conclusion**

Based on the evidence and testimony, I hereby grant an Order of Possession in favour of the landlord effective June 16, 2012 at 1:00 p.m. This order must be served on the tenant and may be enforced through an application to the BC Supreme Court.

I hereby order the landlord to retain the tenant's \$600.00 security deposit in full satisfaction for all of the landlord's monetary claims for rental arrears including the outstanding rent owed until June 16, 2012 after which the tenancy ends.

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: June 04, 2012.

---

Residential Tenancy Branch