



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for the following other remedies as requested by the landlords:

- an Order of Possession pursuant to section 55 based on the tenants' failure to abide by the provisions of a mutual agreement to end this tenancy; and
- authorization to retain all of the tenants' security deposit pursuant to section 38 and as established in their mutual agreement to end this tenancy.

### Issues(s) to be Decided

Are the landlords entitled to end this tenancy on the basis of the mutual agreement to end tenancy and to obtain an Order of Possession? Are the landlords entitled to retain the tenants' security deposit?

### Background and Evidence

This periodic tenancy commenced on May 1, 2012. Monthly rent is set at \$750.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$350.00 security deposit paid on May 1, 2012.

The landlords entered into written evidence a signed copy of a July 12, 2012 mutual agreement to end this tenancy by July 31, 2012. The parties agreed that although the tenants and the landlords' authorized agent signed these mutual agreements, the tenants have refused to vacate the rental premises.

The landlords applied for an end to this tenancy and the issuance of an Order of Possession on the basis of the tenants' non-compliance with their signed mutual agreement to end this tenancy. The landlords also asked for authorization to retain the tenants' security deposit in compliance with a provision included in their mutual agreement to end this tenancy. The landlords' agent gave undisputed sworn testimony that the parties entered into the mutual end to tenancy agreement when the tenants did not pay any of their July 2012 rent. The landlords' agent also gave undisputed testimony that the tenants have not paid anything towards their August 2012 rent.

The tenants did not deny the landlords' allegation that they have failed to pay their July and August 2012 rent. They also confirmed that they remain in the rental unit despite having both signed a mutual agreement to end this tenancy and to enable the landlords to retain their security deposit. The tenants testified that they felt pressured to sign the mutual end to tenancy agreement and testified that the landlord had not provided them with an adequate toilet for a lengthy period of their tenancy (i.e., 50 days). The tenants confirmed that they have made no application for dispute resolution themselves seeking authorization to reduce their monthly rent by an amount to reflect the reduced facilities provided by their landlord during their tenancy.

### Analysis

In the absence of any documentation from the tenants regarding complaints sent to the landlords or any application for authorization to reduce their rent, I find that the tenants had no legal authority to remain in this rental unit beyond the July 31, 2012 effective date of their mutual agreement to end this tenancy. Their claims that they felt pressured into signing this document and their claim that the landlord has not provided adequate services or facilities have little bearing on the undisputed testimony that they have failed to pay rent owing and have remained on the premises past the date they agreed to leave.

Section 55(2)(d) of the *Act* allows a landlord to request an Order of Possession when "the landlord and tenant have agreed in writing that the tenancy is ended." As I find that there is a valid signed mutual agreement to end this tenancy in place, I find that this tenancy ended on July 31, 2012. By that date, the tenants were legally required to vacate the rental premises. As that has not occurred, I issue the landlords a 2-day Order of Possession.

In accordance with the signed provisions of the mutual agreement to end this tenancy, I order that the landlords' retain the tenants' security deposit as a means of partially offsetting outstanding rent owed to the landlords at this time.

### Conclusion

I allow the landlords' application and provide the landlords 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 tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 09, 2012

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Residential Tenancy Branch