



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants: MNDC  
For the landlord: OPB FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenants applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord applied for an order of possession due to the tenants breaching an agreement with the landlord, and to recover the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. The tenants confirmed they received the first evidence package from the landlord. The tenants disputed receiving subsequent evidence packages from the landlord. As a result, the subsequent evidence packages were not considered in this decision. As an alternative, the agent for the landlord was provided the opportunity to read their evidence orally during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matter

The tenants requested to withdraw their application for a monetary order in full. As a result, the hearing continued with the landlord’s application for an order of possession.

The tenants are at liberty to reapply. Withdrawing their application, however, does not extend any applicable timelines under the *Act*.

### Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?

### Background and Evidence

A fixed term tenancy agreement was signed on July 15, 2012 by the parties. The fixed term tenancy began on September 1, 2012 and was to expire on November 30, 2012. Monthly rent in the amount of \$1,000.00 was due on the first date of each month. The tenants paid a security deposit of \$500.00 at the start of the tenancy.

The parties agree that the tenants vacated the rental unit on or about November 27, 2012. Although the tenants have vacated the rental unit, the landlord continues to seek an order of possession.

The fixed term tenancy agreement signed by the parties on July 15, 2012 indicates that both parties signed the section which indicated the tenancy was a fixed term of 3 months starting September 1, 2012, and ending on November 30, 2012. Both parties initialled the boxes of the section which reads:

#### **At the end of this fixed length of time**

ii ) the tenancy ends and the tenant must move out of the residential unit If you choose this option, both the landlord and tenant must initial the boxes to the right.

The tenants stated that a verbal agreement was reached with the landlord that the first three months was a trial period and that they could continue to reside in the rental unit after November 30, 2012. There was no written agreement provided by either party indicating that the written agreement signed on July 15, 2012 had ever been amended or modified.

### Analysis

Based on the oral testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

A written tenancy agreement signed by the parties is enforceable and overrides any verbal agreement made or alleged to have been made between the parties. In the matter before me, there was no evidence to support that the written tenancy agreement was ever modified or amended. Therefore, **I find** that the tenancy ended on the tenancy end date as indicated on the fixed term tenancy agreement, which was November 30, 2012.

As a result, and in the absence of any evidence to the contrary, **I grant** the landlord an order of possession pursuant to section 55 of the *Act*, effective 2 days after service on the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

On the balance of probabilities, **I find** that it was reasonable for the landlord to believe that the tenants would not be vacating the rental unit on or before November 30, 2012 due to the tenants' allegation that a verbal agreement existed between the parties that would extend the tenancy longer than November 30, 2012. Based on the above, **I find** that the landlord was compelled to apply for dispute resolution to request an order of possession. Furthermore, **I find** the landlord is entitled to recover the filing fee of \$50.00 as a result. **I authorize** the landlord to retain the amount of \$50.00 from the security deposit, leaving a security deposit balance of \$450.00 in full satisfaction of the monetary claim.

### Conclusion

I find that the landlord has proven their claim and is, therefore, entitled to an order of possession effective **two days** after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I authorize the landlord to retain \$50.00 of the security deposit in full satisfaction of the recovery of the \$50.00 filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 03, 2012

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Residential Tenancy Branch