



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MCLAREN HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

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### Introduction

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

- an Order of Possession, as the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy, pursuant to sections 44(1)(b) and 55 of the Act.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The hearing lasted approximately 69 minutes from 2:30 p.m. until 3:39 p.m. The tenant disconnected from the hearing early at 3:36 p.m.

The landlord clarified that they are a non-profit housing society, but were not a cooperative, and they did not fall within any of the exceptions in Section 4 ("What this act does not apply to"), and that their lease agreements state that they are governed by the *Residential Tenancy Act*.

The landlord testified that she served the tenant with the Application for Dispute Resolution hearing package ("Application") by posting it to the door of the tenant's residence on September 9, 2014 at 5:55 p.m. The tenant testified that he received the Application but could not recall the date, and that he went to speak with the landlord after receiving the Application. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the Application on September 12, 2014, the third day after its posting.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for a fixed term tenancy agreement which states that the tenant must vacate the rental unit by September 30, 2014?

### Background and Evidence

The landlord testified that this tenancy began on September 1, 2013 for a fixed term ending on January 31, 2014. A subsidized monthly rent of \$375.00 was due on the first day of each month. The landlord renewed the tenancy for a fixed term from February 1, 2014 to July 31, 2014 at the same subsidized monthly rent of \$375.00, due on the first day of each month. The landlord renewed the tenancy a final time for a fixed term of two months from August 1, 2014 to September 30, 2014 at the same subsidized monthly rent of \$375.00, due on the first day of each month, and requiring the tenant to abide by four conditions in order to renew the tenancy. The landlord provided copies of all three tenancy agreements, which were all signed and dated by both the landlord and tenant. The landlord testified that the tenant paid a security deposit of \$492.00 prior to the tenant moving in on September 1, 2013.

Each tenancy agreement above provided that at the end of each fixed term tenancy “at this time the agreement is terminated and it is understood the tenant(s) has no legal right to occupy the suite beyond this date. MHS will consider a renewal of this agreement and notify the resident in writing prior to the expiry date above as to whether they will be offered a new tenancy agreement when the current one expires.” The landlord provided a letter to the tenant, dated August 28, 2014, with her Application, that states that the tenancy ends on September 30, 2014 and that based on the breach of the conditions in the lease agreement, dated July 29, 2014, that the tenancy lease would not be renewed on September 30, 2014.

The tenant testified that he was arrested and hospitalized in the mental health ward since October 8, 2014, but that his belongings were still in the rental unit. The tenant advised that he had disability and prior drug abuse issues. The tenant noted that he had not consulted a lawyer or reviewed the landlord's Application in detail because this hearing was scheduled for his first day of school. When questioned as to whether he was seeking an adjournment of today's hearing, the tenant declined an adjournment, as he testified that he was willing to vacate the rental unit.

The landlord testified that rent had been paid by the tenant for October 2014. The landlord testified that she was unsure whether any rent had been paid by the tenant for November 2014, in which case she advised that she would return the tenant's rent if it had been paid for November 2014, if the tenant vacated the rental unit by 12:00 p.m. on October 31, 2014. The tenant had already disconnected from the hearing at the time the landlord made this statement.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

During this hearing, the parties reached an agreement to settle their dispute under the following final and binding terms:

1. Both parties agreed that this tenancy will end by 12:00 p.m. on October 31, 2014, by which time the tenant will have vacated the rental unit;
2. The landlord committed to return the tenant's security deposit of \$492.00 to the tenant, provided that the tenant vacates the rental unit by 12:00 p.m. on October 31, 2014;
3. Both parties agreed that the tenant is to be escorted by a professional member of the ACT team (assertive community outreach team) while he attends at the rental unit to remove all of his belongings at any time prior to 12:00 p.m. on October 31, 2014;
4. Both parties agreed that the landlord will contact the ACT team, and the Act team will contact the tenant, to arrange sending a professional member of the ACT team to escort the tenant to remove all of his belongings at any time prior to 12:00 p.m. on October 31, 2014;
5. Both parties agreed that the tenant will be escorted by his next-of-kin, JH, on October 27, 2014, in order to retrieve his mail from the mailbox at his rental location but the tenant will not access his rental unit during this time. The landlord will leave a mailbox key at the front desk of the rental location in order for the tenant to access his mailbox only, on October 27, 2014.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

### Conclusion

To give effect to the settlement reached between the parties, I issue the attached Order of Possession to be used by the landlord **only** if the tenant fails to vacate the rental premises in accordance with their agreement. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant does not vacate the premises by the date set out in their agreement. Should the

tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

To implement the settlement between the parties, I order the landlord to return the tenant's \$492.00 security deposit provided that the tenant abides by the terms of the settlement agreement as outlined above.

To create clarity as to the issues before me and to give effect to the landlord's testimony above at the hearing, if the tenant has paid rent for the rental unit to the landlord for November 2014 and if the tenant vacates the rental unit by 12:00 p.m. on October 31, 2014, I order the landlord to return the tenant's rent for November 2014.

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: October 30, 2014

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Residential Tenancy Branch

