



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 479711 Alberta Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPB (O), FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord's application was marked for "other relief for dispute resolution" and in the details of the dispute on the application, listed that they were requesting an order of possession for the rental unit based upon a fixed term tenancy agreement. The landlord additionally applied for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord"), the tenant, and his two legal advocates attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit and to recovery of the filing fee paid for this application?

### Background and Evidence

The landlord provided evidence that the tenant has been living in this rental unit since May 1, 2013, and that although the landlord was issued an order of possession for the rental unit sometime in January 2015, the order of possession was not enforced.

Instead, according to the landlord, the parties signed a 60 day fixed term tenancy agreement on April 30, 2015, for a term of tenancy from May 1, 2015 through June 30, 2015. The landlord submitted a copy of the written tenancy agreement which showed that the tenant was to vacate the rental unit by June 30, 2015, as per both parties initials in the boxes in that provision of the tenancy agreement. There was no provision that the tenancy would to continue on a month to month basis thereafter.

The landlord submitted further that when the tenant informed her on June 4, 2015, that he would not be vacating the rental unit by June 30, 2015, she then was compelled to file her application for dispute resolution seeking the order of possession for the rental unit.

In response, the tenant denied informing the landlord he would not vacate, but agreed that he did not vacate the rental unit by June 30, 2015. The tenant submitted that when he paid rent on July 1, 2015, and did not receive a receipt for payment, he understood the tenancy continued on a month-to-month basis.

In further response, the tenant's legal advocate submitted that a new tenancy was created when the tenant paid rent with no receipt being issued. The tenant's legal advocate cited Residential Tenancy Branch Policy Guideline #11.

I note that the tenant's legal advocate submitted that the tenant's copy of the written tenancy agreement did not contain his initials by the term requiring him to vacate at the end of the fixed term; however, the tenant did not deny that he had placed his initials in the box and the landlord explained that the tenant's copy was for him to do as he wished, as he had signed the original and he received a copy of the original in the landlord's application package. I have reviewed the document and find that the initials appear to be authentic.

### Analysis

Section 44 of the Act states the ways a tenancy ends, with subsection (1)(b) providing that one way a tenancy ends is when 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. Section 55 (2)(b) of the Act states that a landlord is entitled to an order of possession for the rental unit under these circumstances.

In the case before me, I find the landlord submitted sufficient evidence that the parties agreed that the tenancy would end and the tenant must vacate the rental unit at the conclusion of the fixed term, in this case, June 30, 2015, and therefore the landlord is entitled to request and receive an order of possession for the rental unit.

I do not find that Residential Tenancy Branch Policy Guideline #11 applies to this dispute, as the landlord has not issued the tenant a Notice to end the tenancy.

I also do not find that a new tenancy was created or that the tenancy converted to a month-to-month tenancy when the landlord accepted rent for July 2015, as the tenant was overholding in the rental unit when he failed to vacate by June 30, 2015, and at that point, the landlord would therefore be entitled to a loss of rent revenue for July, had the tenant not paid rent.

Due to the above, I therefore grant the landlord an order of possession for the rental unit effective 2 days after service upon the tenant and have enclosed it with the landlord's Decision.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon the tenant, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are subject to recovery from the tenant.

As the landlord has been successful with their application, I grant them recovery of the filing fee paid for this application of \$50.00, pursuant to section 72(1) of the Act. I grant the landlord a final, legally binding monetary order in the amount of \$50.00, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

In the alternative, the landlord may deduct \$50.00 from the tenant's security deposit in satisfaction of their monetary award.

Conclusion

The landlord's application is successful as I have granted them an order of possession for the rental unit, effective 2 days after service upon the tenants and a monetary order for recovery of their filing fee.

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: July 30, 2015

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Residential Tenancy Branch

