



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O, FF

### Introduction

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

- authorization to recover her filing fee for this application from the tenant pursuant to section 72; and
- an "other" remedy.

The landlord's request for an "other" remedy is a request for an order of possession on the basis of the tenant's notice to end tenancy.

Both parties attended the hearing. The landlord was assisted by her son and her daughter. The landlord's daughter acted as her agent in these proceedings. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The agent testified that she personally served the tenant with the dispute resolution package on 26 May 2015. The tenant did not contest service. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession on the basis of the tenant's notice? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent and tenant, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began in March 2014 with the former owner of the rental unit. On or about 23 January 2015, ownership of the rental unit transferred to the landlord. Monthly rent of \$900.00 is due on the first. The landlord holds the tenant's security deposit in the amount of \$450.00, which was collected at the beginning of this tenancy.

The rental unit was occupied by the tenant and his subtenant. At some point in May, the subtenant vacated the rental unit.

On 1 May 2015, the tenant issued a notice to end tenancy. That notice was dated 1 May 2015. The notice was signed by the tenant and cotenant. The notice contained the address of the rental unit. The notice set out that the tenant was going to vacate the rental unit on or before 31 May 2015.

On 21 May 2015, the tenant advised the agent that he intended to stay in the rental unit. The landlord filed her application 26 May 2015 seeking possession of the rental unit.

The tenant paid rent, in full, for June and July. The landlord issued receipts to the tenant. I was not provided with copies of the receipts and neither party provided testimony as to the specific content of the receipts. The tenant testified that he understood that the landlord's application was proceeding today and that the landlord was still seeking an order of possession.

The tenant submitted that he rescinded the notice because of issues with the subtenant.

### Analysis

In accordance with section 44 of the Act, a tenancy ends where:

- the landlord or tenant gives notice,
- the landlord and tenant agree; or
- the tenant abandons the rental unit.

Subsection 45(1) of the Act sets out that:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date after the landlord receives the notice, and
- (b) is before the day in the month...that rent is payable under the tenancy agreement.

Where a tenant provides for an incorrect effective date on a notice to end tenancy, section 53 of the Act deems it to be changed, where the given date is earlier than the correct effective date, to the earliest date permitted under that section/where the given date is any day other than the day before the day in the month where rent is payable under the agreement, the effective date is changed to the day before the day in the month that complies with the notice required period. In this case, the earliest effective date for the tenant's notice delivered on 1 May 2015 was 30 June 2015. The effective date of 31 May 2015 is automatically corrected to 30 June 2015.

Pursuant to subsection 45(4) of the Act, a notice given pursuant to section 45 must comply with section 52 of the Act.

Section 52 sets out the various requirements of a notice to end tenancy:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,...

The notice provided by the tenant and subtenant meets all of the requirements of section 52.

The tenant was not entitled to unilaterally rescind the valid notice once given. The tenant testified that he understood that the landlord was still seeking an order of possession. I find that the landlord did not reinstate the tenancy by accepting rent for July.

As the tenant's notice was validly issued and the tenancy has not been reinstated, the landlord is entitled to an order of possession. As the tenant has paid for his use and occupancy of the rental unit for July he is entitled to remain in the rental unit until 31 July 2015.

As the landlord has been successful in this application, she is entitled to recover the filing fee from the tenant. The agent testified that the landlord continues to hold the tenant's \$450.00 security deposit, plus interest, collected at the beginning of the tenancy. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain \$50.00 from the security deposit in satisfaction of the monetary award.

### Conclusion

I order the landlord to recover the \$50.00 filing fee from the tenant by allowing the landlord to retain \$50.00 from the security deposit for this tenancy. I order that the value of the security deposit for this tenancy is reduced from \$450.00 to \$400.00.

The landlord is provided with a formal copy of an order of possession effective at one o'clock in the afternoon on 31 July 2015. Should the tenant(s) 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 subsection 9.1(1) of the Act.

Dated: July 10, 2015

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Residential Tenancy Branch

