



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            O

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession based on a mutual agreement to end the *tenancy*. (*pursuant to section 55 of the Act*)

Neither tenant attended this hearing, although I waited until 9:44 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions with respect to his application. The landlord testified that he served both tenants with copies of his Application for Dispute Resolution ("ADR") package by registered mail on August 7, 2015. He testified that Canada Post tracking information indicated that the tenants received this package on August 10, 2015. The landlord also provided sworn testimony that the tenants advised him by telephone that they had received the package by registered mail. The landlord testified that he also personally served both tenants at the door with secondary copies of the dispute resolution package on August 7, 2015. Given the evidence of the landlord, and pursuant to section 89 and 90 of the *Act*, I accept that the tenants were both deemed served with the ADR package on August 12, 2015, 5 days after the registered mailing.

### Issue to be Decided

Is the landlord entitled to an Order of Possession based on a mutual agreement to end tenancy?

### Background and Evidence

The landlord provided evidence that this tenancy began on June 1, 2015 as a month to month tenancy. The rental amount of \$1590.00 was payable on the first of each month. The landlord testified that he continues to hold a security deposit in the amount of \$795.00 and a pet damage deposit in the amount of \$795.00 both paid by the tenants at the outset of this tenancy.

The landlord sought an order of possession for the rental unit. He testified that, on both parties signed a mutual agreement to end tenancy. Out of an abundance of caution and based on an

increasing difficulty in communicating with the tenants, the landlord made an application for an order of possession to ensure that the tenants vacate the rental unit as agreed.

The landlord submitted a copy of mutual agreement dated July 29, 2015 signed by the landlord and the two tenants. The mutual agreement, prepared on a Residential Tenancy Branch form indicates an agreed upon move-out date of September 30, 2015.

Other documentary evidence submitted by the landlord and the tenants for this hearing include correspondence between the two parties as well as copies of letters from the strata corporation related to this tenancy. The letters from the strata corporation refer to a variety of by-law infractions at the residential premises by the tenants. The correspondence between the parties refers to these by-law infractions as well as arranging for the parties to meet and discuss residential tenancy issues.

### Analysis

Section 44 of the *Act* provides the scenarios under which a residential tenancy may end.

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(b) 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;

**(c) the landlord and tenant agree in writing to end the tenancy;**

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended...

**(emphasis added)**

In this case, pursuant to section 44(c) of the *Act* and in accordance with section 52 of the *Act* requiring a notice or agreement to be in an approved form, I find the landlord and tenant agreed in writing to end this tenancy.

Section 55(2)(d) of the *Act* allows an arbitrator to provide a landlord with an order of possession when the landlord makes a request for such an order and the tenant fails in opposing such an order or does not oppose such an order in accordance with the *Act*.

**55** (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

As I have found that that landlord and tenant have agreed to end this tenancy on September 30, 2015, I provide the landlord with an order of possession for that date.

### Conclusion

I grant the landlord an Order of Possession dated September 30, 2015.

The landlord is provided with a formal copy of an Order of Possession. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 10, 2015

---

Residential Tenancy Branch

