



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, FF

### Introduction

This was a hearing with respect to the landlord's application for an order of possession. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing. The hearing was originally set to be heard by conference call on March 11, 2016. A technical fault with the conference call system prevented the parties from communicating at the hearing and it was reconvened for hearing on the following day. All parties were present and able to be heard at the reconvened hearing.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

### Background and Evidence

The rental unit is a residence in the Okanagan. The tenancy began in June, 2013 on a month to month basis. Monthly rent was \$1,300.00. The tenants paid a \$650.00 security deposit at the start of the tenancy. According to the landlord the tenants were late in paying rent and the rent fell into arrears. The landlord said that because the tenants were late in paying rent he requested that the tenants sign a fixed term tenancy agreement with a provision that the tenants move out at the end of the fixed term. I was not provided with a copy of the first such tenancy agreement, but thereafter the tenancy continued with successive fixed term agreements drafted by the landlord and signed by the tenant's. The last of these agreements was for a three month fixed term commencing October 1, 2015 and ending December 31, 2105. The agreement provided that the tenants must move out at the end of the fixed term. The landlord said he expected the tenants to move out, but as of January 1<sup>st</sup>, 2016 he saw no indication that they were moving and he found that the tenants left him a cheque in payment of January rent. He accepted the cheque and deposited it to his account. He advised the

tenants that he accepted the payment for use and occupancy only and not to reinstate the tenancy. The tenants said that the landlord usually gave them a new fixed term agreement just before the expiry of the previous one.

The tenants have had financial and personal difficulties during the course of the tenancy and the male tenant has health problems that affect his mobility and may limit his choices for available housing.

The landlord received a cheque in payment of February rent, but he chose not to cash it. The landlord said he did not cash the cheque because he did not want to prejudice his position.

The tenants gave the landlord a written notice on January 8<sup>th</sup>, 2016. They said in the notice that they were terminating their rental effective March 31, 2016. The tenants have not paid rent for March. At the hearing they agreed that they were responsible for payment of March rent and agreed that the landlord was entitled to a monetary order for payment of March rent. The tenant said they intended to move out by the end of March

At the hearing the landlord accepted the tenant's proposal to move out by the end of March. He requested that in addition to a monetary award for March rent, he be granted the \$100.00 filing fee for his application. The tenants objected to recovery of the filing fee because they said this matter could have been resolved without a hearing if the landlord had communicated with the tenants.

### Analysis

The fixed term tenancy agreement imposed by the landlord ended on December 31, 2015. It has been extended because the landlord accepted a rent payment for January. The tenants gave written notice on January 18<sup>th</sup> that they would move out on March 31<sup>st</sup>. On January 26, 2016 the landlord filed his application for dispute resolution to request an order of possession pursuant to the provisions of the fixed term tenancy.

Based on the tenants' written notice to the landlord, ending the tenancy, I grant the landlord an order of possession effective March 31, 2016. This order may be filed in the Supreme Court and enforced as an order of that court.

Based on the tenants' acknowledgment at the hearing that March rent is outstanding, I amend the landlord's application to include a claim for March rent and I grant the landlord an award of \$1,300.00 for March rent.

With respect to the filing fee claimed by the landlord, I accept the tenants' submission that this hearing could have been resolved through better communication, but the tenancy itself is a contractual agreement and the landlord is entitled to certainty with respect to determining when the tenancy will end. This is particularly so when there is rent outstanding. I find that although this application might have been avoided, the landlord was within his rights in bringing the application and therefore should not be deprived of his filing costs. I award the landlord the \$100.00 filing fee and I grant him an order under section 67 in the amount of \$1,400.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

The return of the tenants' security deposit any claims by the landlord must be dealt with in accordance with the *Residential Tenancy Act* after the tenancy has ended.

### Conclusion

The tenancy will end March 31, 2016. The landlord has been granted an order of possession and a monetary order for March rent as well as the 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: March 11, 2016

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Residential Tenancy Branch

