



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPM MNR MNDC O FF

### Introduction

This hearing was convened as a result of cross-Applications for Dispute Resolution filed by the Landlord and the Tenants. The Landlord's Application was received by the Residential Tenancy Branch on May 2, 2016. The Tenants' Application was received by the Residential Tenancy Branch on May 19, 2016.

The Landlord seeks the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order of possession; and an order granting recovery of the filing fee.

The Tenants seek the following relief pursuant to the *Act*: a monetary order for the cost of emergency repairs; a monetary order for money owed or compensation for damage or loss; an order granting recovery of the filing fee; and other unspecified relief.

Both parties appeared at the hearing. The Landlord was represented by J.M. Both Tenants were represented by W.C. The Tenants also called a witness, L.D., who gave oral testimony and provided a letter in support of the Tenants.

All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in these

proceedings is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Landlord's Application for an order of possession and request for recovery of the filing fee. The Tenants are granted leave to reapply for their monetary claims at a later date. I note that this does not extend any applicable timelines under the *Act*.

### Issues to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Are the Tenants entitled to recovery of the filing fee?

### The Landlord's Evidence

The Landlord submitted into evidence a copy of the tenancy agreement between the parties. The tenancy agreement confirms a fixed-term tenancy for the period from December 4, 2015 to November 30, 2016. Rent in the amount of \$1,400.00 per month was payable on or before the first day of each month. A security deposit in the amount of \$700.00 was received by the Landlord on December 2, 2015.

The Landlord also included in the documentary evidence a copy of a written agreement, signed by the parties, purporting to end the tenancy by mutual agreement (the "Agreement"). The Agreement states:

"We, [the Tenants], agree to vacate the house and property by 5:00 pm on April 15, 2016.

We will remove all our belongings and clean the house and remove any and all garbage belonging to us or from us before receiving our damage deposit back.

...

Upon receipt of a bank Draft in the amount of \$2,900.00 we will not hinder the landlords access to the property.

...

Once we have vacated the above mentioned house and property, we will release the Landlord unconditionally from the current Residential Tenancy Agreement which is dated December 3, 2015. The Landlord will then release us unconditionally from the said Residential Tenancy Agreement.”

(reproduced as written)

J.M. provided oral testimony about the formation of the written agreement. She stated the Tenants came to her office together. They met in the parking lot where the Tenants were given a copy of the Agreement. J.M. advises the Tenants read and signed the Agreement, then left. The Tenants did not raise any concerns about the Agreement until the Landlord's Application was filed.

J.M. further confirmed the \$2,900.00 was paid to the Tenants as per the Agreement. This was made up of \$2,100.00 for work done by the Tenants on the rental property and \$800.00 for moving expenses the Tenants had incurred. W.C. confirmed the bank draft was cashed by the Tenants.

However, on behalf of the Tenants, W.C. submitted the Agreement was entered into involuntarily and under duress.

#### The Tenants' Evidence

The Tenants claim the Agreement relied on by the Landlord was “obtained by fraud, deception, harassment, intimidation, and other unlawful means.”

In support of these allegations, W.C. provided oral testimony, and referred me to his written submissions.

W.C. stated that problems with the rental property arose almost as soon as they moved in. Soon after moving in, an issue was discovered with respect to the septic system.

W.C. submitted that the Tenants' concerns were made known to the Landlord. Following discussions with the Landlord, and with the Landlord's approval, the Tenants took steps to repair a broken pipe in the septic system. The Tenants say they have incurred costs associated with the work, including the cost of renting a Bobcat, an excavator, and wages owed to L.P.

W.C. also testified that the Tenants have suffered constant disruption to their quiet enjoyment during the tenancy. He advised that people claiming to be the owners have

accessed the property without proper notice on a regular basis, and that these people have wrongfully used the water and power associated with the rental unit. W.C. says these utilities, and a shed on the rental property, are being used in the operation of a blueberry farm adjacent to the rental property.

W.C. also referred to an incident in March when a tractor was being used “under the kitchen window” at 7:00 a.m.

L.D. also gave evidence for the Tenants. L.D. is a former tenant at the rental property who described having similar issues with the Landlord during his tenancy.

In reply, the Landlord stated that, at the beginning of the tenancy, the shared driveway and occasional use of the rental property by the owner and others was discussed with the Tenants. W.C. denied this discussion occurred as alleged.

### Analysis

The Landlord alleges the tenancy ended on April 15, 2016, in accordance with the Agreement, and requests an order of possession.

The Tenants say the agreement was “obtained by fraud, deception, harassment, intimidation, and other unlawful means”, and has claimed they are entitled to be paid for work done at the rental property and for loss of quiet enjoyment.

Based on all of the above evidence and testimony, and on a balance of probabilities, I find:

The parties entered into an Agreement to end the tenancy on April 15, 2016. The Landlord fulfilled their part of the Agreement. The Tenants did not.

In addition, I find there is insufficient evidence to conclude the Agreement should not be upheld due to fraud, deception, harassment, intimidation, or other unlawful means, as alleged by the Tenants. While the events described by W.C. may give rise to a monetary claim by the Tenants, I make no finding in that regard. In any event, I conclude they did not impact the Tenants decision to end the tenancy as per the Agreement.

### The Landlord's Claims

I am satisfied the Agreement between the parties ended the tenancy on April 15, 2016, at 5:00 p.m. Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenants.

Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid. Pursuant to section 72 of the *Act*, this amount may be deducted from the security deposit paid by the Tenants.

### The Tenants' Claims

Pursuant to the Residential Tenancy Branch Rule of Procedure 2.3, the Tenants' claims for a monetary order for the cost of emergency repairs, and for money owed or compensation for damage or loss, are dismissed with leave to reapply.

As the Tenants have not been successful, I decline to award them an order granting recovery of the filing fee from the Landlord.

### Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Tenants' claims are dismissed with leave to reapply.

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: June 06, 2016

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Residential Tenancy Branch