



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF, O

### Introduction

This hearing dealt with an application by the landlord for “other” remedy seeking an order of possession and an order to recover the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to the recovery of the filing fee?

### Background and Evidence

The landlord gave the following testimony. The parties signed a two year fixed term tenancy that expired on August 31, 2015. The parties agreed to sign another tenancy. The one year fixed tenancy began on September 1, 2015 and is scheduled to end on the day of the hearing; August 31, 2016. Rent in the amount of \$2200.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$1100.00. The landlord stated that as per the tenancy agreement, the tenancy is to end today and that the parties agreed that the tenants would move out as per the vacancy clause.

The landlord stated that clause 14 of the addendum to the tenancy agreement states “A new Tenancy Agreement may be signed by both parties before June 1, 2016. You will have first option to renew at \$2275.00/month for the following year. IF or when, I decide to sell the property, you will have the FIRST option to purchase it. The landlord stated that that the tenants did not advise him by June 1, 2016 that they were interested in signing a new agreement. The landlord stated that he provided two subsequent opportunities past the deadline to sign an agreement, but to no avail. The landlord

stated that because of their inaction he decided he no longer wanted to rent to tenants that were unsure as he was seeking long term tenants and advertised the unit. The landlord stated that he advised the tenants that he would not be renting the home to them or selling the home to them.

The landlord stated that he at no time signed a binding contract to sell the home to the tenants and because they did not respond to his repeated attempts to sign a new tenancy agreement, he moved on and now requests an order of possession as the tenancy has expired and the tenants must move out.

The tenants gave the following testimony. The tenants stated that the prospect of purchasing the property was always something that they had considered. The tenants stated that the landlord has waived his right to request an order of possession as he made attempts to sign a new lease with them past the deadline. The tenants stated the reason they didn't sign a new lease was that they were in negotiations with the landlord in regards to purchasing the property. The tenants stated that they would like the Branch to order the landlord to sell the property to them or at least order the landlord to sign another one year fixed term agreement.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords claim and my findings around each are set out below.

Based on the documentation before me, I find that it is clear that the tenancy is set to end on August 31, 2016 and that based on the signed tenancy agreement; the tenants were fully aware that are required to move out as per the vacancy clause. I also find that the landlord did not waive his right to enforce this clause by asking the tenants on two subsequent occasions if they wish to sign a new fixed term tenancy, quite the contrary. I find that the landlord acted in a fair and reasonable manner by making further attempts to negotiate a new agreement, but when the tenants failed to respond in a timely fashion, the landlord moved on and took steps to re-rent the unit.

The addendum stated that the parties may sign a new contract, not must. The tenants cannot unilaterally decide as to whether a new contract is to be entered into no more than the landlord could force them to sign a new agreement after its expiry. Based on the above facts I find that the landlord is entitled to an order of possession. The tenant

must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. As per the tenancy agreement, the tenancy ended on August 31, 2016.

The landlord is also entitled to recovery of the \$100.00 filing fee. I order that the landlord retain \$100.00 from the security deposit in full satisfaction of the claim.

Conclusion

The landlord is granted an order of possession.

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 2, 2016

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Residential Tenancy Branch