



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

ET OPB

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, submitted to the Residential Tenancy Branch on November 8, 2016 (the "Application").

The Landlord applied for an order ending the tenancy early, pursuant to section 56 of the *Residential Tenancy Act* (the "*Act*"). However, as described below, the Application was amended to include a request for an order of possession pursuant to section 55(2) of the *Act*.

The Landlord attended the hearing on her own behalf, and provided affirmed testimony. The Tenant did not attend the hearing.

The Landlord testified that the Tenant was served with the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, by registered mail on November 15, 2016. In support, the Landlord submitted a Canada Post registered mail receipt bearing the same date. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Landlord's Application package is deemed to have been received by the Tenant on November 20, 2016.

The Landlord was given an opportunity to present 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 and Procedural Matters

The Landlord applied to end the tenancy early, pursuant to section 56 of the *Act*. However, at the beginning of the hearing, the Landlord requested that the Application be amended to include a request for an order of possession for breach of the fixed-term tenancy agreement.

The tenancy agreement provided by the Landlord confirms the parties entered into a fixed-term tenancy from June 30 to October 30, 2016. The signed agreement confirms that at the end of the fixed term the tenant was to move out of the rental unit. This provision was further initialled by the parties.

I find there is no prejudice to the Tenant in amending the Landlord's Application as requested. The Tenant signed the tenancy agreement and provided her initials next to the clause requiring her to move out at the end of the fixed term. Accordingly, I amend the Landlord's Application to include a request for an order of possession for breach of the fixed-term tenancy agreement, pursuant to section 55(2) of the *Act*.

### Issues to be Decided

Is the Landlord entitled to an order of possession?

### Background and Evidence

As noted above, the Landlord provided with her documentary evidence a copy of the written tenancy agreement between the parties. The agreement confirms the fixed-term tenancy began on July 30, 2016, and ended on October 30, 2016. The parties initialled the clause requiring the Tenant to move out at the end of the fixed term. However, the Tenant continues to occupy the rental unit.

### Analysis

Based on the Landlord's affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 55(2) of the *Act* states:

*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:*

...

*(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;*

[Reproduced as written.]

In this case, the tenancy agreement confirms, and I find, that the fixed term tenancy ended on October 30, 2016, and that the Tenant was to move out of the rental unit on that date. However, the tenant continues to occupy the rental unit.

Pursuant to section 55(2) of the *Act*, the Landlord is granted an order of possession, which will be effective one (1) day after service on the Tenant.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application, which I order may be deducted from the security deposit paid by the Tenant.

As the tenancy has ended based on the Tenant's breach of the fixed-term tenancy agreement, it is not necessary for me to consider the Landlord's request to end the tenancy early pursuant to section 56 of the *Act*.

#### Conclusion

In light of the above, I grant the Landlord an order of possession, which will be effective one (1) day after service on the Tenant. The order of possession may be filed in 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: December 09, 2016

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Residential Tenancy Branch