



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

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### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on January 6, 2017 (the "Application"). The Landlord applied for an order granting recovery of the filing fee, and for other relief, pursuant to the *Residential Tenancy Act* (the "Act"). However, the written details on the Landlord's Application confirm the Landlord also sought an order of possession based on an agreement between the parties, dated December 3, 2016. Pursuant to section 64 of the *Act*, I find it appropriate in the circumstances to amend the Landlord's Application to include the claim for an order of possession.

The Landlord attended the hearing with her husband, A.M., although R.W. spoke on behalf of the Landlord. The Tenants attended the hearing on their own behalves. All parties giving evidence provided a solemn affirmation.

The Landlord testified that the Application package and documentary evidence were served on the Tenants by registered mail. In support, the Landlord submitted copies of Canada Post registered mail receipts. The Tenants acknowledged receipt of the Landlord's Application package and subsequent documentary evidence packages.

The Tenant testified their evidence package was served on the Landlord by regular mail on January 10, 2017. The Landlord denied receipt. However, my decision does not turn on the Tenants' documentary evidence. As a result, I find that neither party is prejudiced by my decision not to consider this evidence.

All parties were represented at the hearing and were prepared to proceed. The hearing proceeded and no further issues were raised with respect to service, receipt or admissibility of the parties' documents. The parties 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 evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

### Preliminary and Procedural Matters

During the hearing, the Tenant S.N. confirmed the correct spelling of his name, which was supported by a copy of a cheque submitted into evidence. Accordingly, pursuant to section 64 of the *Act*, I amend the Landlord's Application to reflect the correct spelling of that Tenant's name.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

### Background

A copy of the tenancy agreement between the parties was not submitted into evidence. However, the parties agreed the tenancy began on July 1, 2014. Rent in the amount of \$1,450.00 per month is due on the first day of each month. The Tenant paid a security deposit in the amount of \$650.00, which the Landlord holds.

The Landlord sought an order of possession and relied upon a hand-written agreement, dated December 3, 2016. In the agreement, signed by the Landlord and the Tenant S.N., the parties agreed the Tenants would move out of the rental unit on January 1, 2017. However, the Tenants continue to occupy the rental unit.

In reply, the Tenant S.N. testified he was "put under a lot of stress" to sign the document, which the Landlord denied. The Tenant S.L. advised she did not sign the agreement and noted that rent has been paid to January 31, 2017.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 55(2) of the *Act* permits a landlord to request an order of possession of a rental unit when the landlord and tenant have agreed in writing that the tenancy is ended. In

this case, I find the Landlord and the Tenant S.N. agreed in writing that the tenancy would end on January 1, 2017. Although the Tenant S.L. argued she did not sign the agreement, and the Tenants have paid rent to January 31, 2017, I find the Landlord is entitled to rely on the agreement. With respect to the allegation made by the Tenant S.N. that the agreement was signed under duress, I find there is insufficient evidence to make that conclusion. Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service of the order on the Tenants.

As the Landlord has been successful, I grant the Landlord a monetary award of \$100.00 as recovery of the filing fee paid to make the Application. I order that this amount may be deducted from the security deposit.

### Conclusion

I grant the Landlord an order of possession, which will be effective two (2) days after it is served on the Tenants.

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: February 1, 2017

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Residential Tenancy Branch