



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPB, FF

### Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested an Order of Possession based on a mutual agreement to end tenancy signed February 2, 2017 and to recover the filing fee.

Only the Landlord appeared called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he personally served the Tenant with the Notice of Hearing and the Application on March 4, 2017. The Landlord also testified that he spoke with the Tenant on Saturday April 1, 2017 and the Tenant confirmed she was aware of the telephone conference today.

Accordingly, I find the Tenant was duly served with notice of this hearing and I proceeded with the hearing in her absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### 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 and Evidence

The Landlord testified that the tenancy began December 2, 2016. Monthly rent was payable in the amount of \$1,100.00.

The Landlord testified that the Tenant failed to pay \$150.00 of her January 2017 rent and failed to pay rent for February 2017.

A copy of the Mutual Agreement to End a Tenancy was provided in evidence and indicated it was signed on February 2, 2017. The Tenant agreed to move from the rental unit by 6:00 p.m. on February 18, 2017.

The Landlord stated that the Tenant failed to move from the rental unit as agreed.

The Landlord stated that the Tenant's boyfriend paid her rent for March and April 2017 and the Landlord issued a receipt clearly indicating that the payment was "for use and occupancy only".

The Landlord requested an Order of Possession and recovery of the filing fee.

### Analysis

Based on the Landlord's undisputed testimony and evidence and on a balance of probabilities I find as follows. I find the parties signed a Mutual Agreement to End a Tenancy on February 2, 2017.

Section 44 of the *Residential Tenancy Act* provides as follows:

#### **How a tenancy ends**

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Pursuant to section 44(1)(c) I find that the tenancy has ended. Pursuant to section 55 I grant the Landlord an Order of Possession effective two (2) days after service on the Tenant. The Landlord may file and enforce the Order of Possession in the B.C. Supreme Court if necessary.

The Landlord, having been successful, is entitled to recover of the \$100.00 filing fee. I award the Landlord a Monetary Order for this amount. This Monetary Order must also be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

#### Conclusion

The Landlord is entitled to an Order of Possession based on the Mutual Agreement to End Tenancy. The Landlord is also entitled to a Monetary Order in the amount of \$100.00.

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: April 03, 2017

---

Residential Tenancy Branch