



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, OPC

### Introduction

This hearing convened as a result of the Landlords' Application for Dispute Resolution wherein the Landlords requested an Order of Possession based on the expiration of a fixed term tenancy and a Notice to End Tenancy issued March 3, 2017.

The hearing was conducted by teleconference on April 6, 2017. Only the Landlords called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord, J.M. testified that she served the Tenant with the Notice of Hearing and the Application on March 10, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. J.M. testified that the Tenant refused delivery of the registered mail package and as such she had two people, M.E., and B.M. personally serve the package on the Tenant.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served by registered mail are deemed served five days later; accordingly, I find the Tenant was duly served as of March 15, 2017 and I proceeded with the hearing in their 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 Landlords' 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.

### Issue to be Decided

1. Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord testified that the Tenant moved into the rental unit approximately two years ago. The Landlord stated that she purchased the rental property in June of 2015 at which time the Tenant was residing in the rental unit. The Landlord stated that the Tenant has remained in the rental unit pursuant to fixed term tenancies, the current one being from January 1, 2016 to March 31, 2017. A copy of the residential tenancy agreement signed December 23, 2016 was provided in evidence by the Landlord.

Paragraph 3 of the residential tenancy agreement provides as follows:

**Length of tenancy:** (please check a, b or c and provide additional information as requested)

This tenancy is:

☐ a) on a month-to-month basis


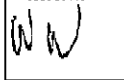
☒ b) for a fixed length of time: 3 months ending on: 31 March 2017  
length of time day month year

**At the end of this fixed length of time:** (please check one option, i or ii)

☐ i) the tenancy may continue on a month-to-month basis or another fixed length of time

☒ ii) the tenancy ends and the tenant must move out of the residential unit  
 If you choose this option, both the landlord and tenant must initial in the boxes to the right.

☐ c) other periodic tenancy as indicated below:

Landlord's Initials	Tenant's Initials
	

The Landlord also testified that the Tenant failed to pay her electrical utility as required by the tenancy agreement. As a result the landlord issued a Notice to End Tenancy on March 3, 2017; a copy of which was also provided in evidence.

The Landlord stated that the Tenant failed to pay the outstanding utilities and did not make an application to dispute the Notice.

### Analysis

The Landlords seek an Order of Possession based on the expiration of the fixed term provided for in the residential tenancy agreement as well as the undisputed Notice to End Tenancy.

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.

[Emphasis added in bold]

The residential tenancy agreement provided in evidence, and reproduced in this my Decision, clearly indicates this fixed term tenancy ends on March 31, 2017 and that the Tenant must move out of the residential unit at the end of the tenancy. Accordingly, pursuant to section 44(1)(b), I find that this tenancy ended March 31, 2017.

Having ended the tenancy based on the expiration of the fixed term, I need not consider whether the Landlords have cause to end the tenancy as set out in the Notice to End Tenancy. However, I note that the Tenant failed to dispute the Notice within five days as required by the *Act* and as such she is conclusively presumed to accept the end of the tenancy pursuant to section 46 of the *Act*.

The Landlords are at liberty to apply for monetary compensation for unpaid utilities.

### Conclusion

The Landlords' Application for an Order of Possession pursuant to sections 44(1)(b) and 55 of the *Residential Tenancy Act* is granted. The Order of Possession is effective two (2) days after service on the Tenant. The Landlords must serve Order of Possession on the Tenant and may file and enforce the Order of Possession in the B.C. Supreme Court if necessary.

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 06, 2017

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Residential Tenancy Branch