



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**      OPB

#### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for an Order of Possession pursuant to section 55.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The respondents confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") as well as the evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the respondents were duly served with the Application and landlord's evidence. The respondents did not submit any written evidence for this hearing.

The tenant, KG, indicated at the beginning of this hearing that she had moved out on March 14, 2017 per the Mutual Agreement signed on March 9, 2017. Accordingly the landlord's application for an Order of Possession pursuant to section 55 only applies to the respondent SK.

#### **Issues to be Decided**

Is the landlord entitled to an Order of Possession?

#### **Background and Evidence**

The landlord testified regarding the following facts. This month-to-month tenancy began in March 2016 with monthly rent currently set at \$900.00 which is payable on the first day of each month. No security deposit was ever paid. This tenancy ended on March 14, 2017 by way of a mutual agreement that was signed by KG and the landlord on March 9, 2017, and she had moved out as per this agreement. A copy of the mutual agreement was submitted in evidence.

The respondent SK continues to reside in the rental unit, stating that he did not sign the mutual agreement to end this tenancy. No written tenancy agreement was ever signed, and the landlord and KG testified that KG was the sole tenant in this tenancy.

KG testified in this hearing that she was the original tenant in this tenancy, and that she was the one who paid the \$900.00 monthly rent. She testified that SK had moved in with her in November of 2016 as her boyfriend at the time, and the relationship had deteriorated around Christmas of 2016. She testified that SK had never paid rent to herself or the landlord, and that this tenancy had ended in March as per the mutual agreement that she had signed, but SK refused to move out.

SK testified in this hearing that he did not sign the mutual agreement, and that he had an agreement with KG that he may reside at the suite until June 30, 2017. He did not dispute the fact that he had never paid rent to the landlord, but he believed that per the agreement between himself and KG he should be allowed to stay. No copy of this agreement was submitted in evidence.

### **Analysis**

The definitions of a “tenancy” and a “tenancy agreement” are outlined in the following terms in section 1 of the *Act*:

**“tenancy”** means a tenant’s right to possession of a rental unit under a tenancy agreement;

**“tenancy agreement”** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

All parties in this hearing agreed that the Respondent, SK, has never paid any rent, did not pay a security deposit, and never entered into an agreement with the landlord. The landlord testified that there was never a tenancy agreement between SK and himself, but that the Respondent, KG, paid him rent and was his sole tenant until it ended per the Mutual Agreement in March 2017. The Respondent, SK, has never paid money for the occupancy, nor does it appear that any consideration of value has been provided for this occupancy. SK testified that he had an agreement between himself and KG, that he was allowed to stay until June 2017, but no copy of any agreement, or any documentation or witness testimony was provided in this hearing to support that. Based on the evidence, I do not find that the relationship between the SK and the landlord is a tenancy, and that the tenancy between KG and the landlord had ended on March 14, 2017 pursuant to the signed Mutual Agreement.

The Respondent, SK, is an occupant, and not a tenant under the definition of section 1 of the *Act*. Residential Tenancy Branch Policy Guideline #13 establishes that an occupant has no rights or obligations under the tenancy agreement, unless all parties

agree to enter into a tenancy agreement to include the occupant as a tenant. As I am not satisfied that the landlord agreed to include the Respondent SK as a tenant in the property, the *Act* does not apply to their relationship. I find that Respondent SK was an occupant, with no legal right to possession of the rental unit after Respondent KG entered into a legal and binding mutual agreement to end her tenancy with the landlord. I find that the valid mutual agreement to end the tenancy between the landlord and Respondent KG was sufficient to end this tenancy. Respondent SK was not a party to the tenancy agreement and has no status under the *Act* as an occupant of the premises formerly rented by Respondent KG.

Under these circumstances, I find that this tenancy legally ended on March 14, 2017. This required Respondent KG and any other occupant of the premises to vacate the premises at that time. As Respondent SG remains in the rental unit following the end to this tenancy without any legal right to do so, the landlord is entitled to an Order of Possession pursuant to the mutual agreement to end tenancy entered into between the landlord and Respondent KG.

### **Conclusion**

The tenancy between KG and the landlord ended on March 14, 2017 by way of mutual agreement.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant **and any occupant** fail to comply with this Order, this Order may be filed 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: May 1, 2017

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Residential Tenancy Branch