



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPB FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the application) under the *Residential Tenancy Act* (the "Act") to obtain an order of possession due to the tenant breaching a fixed term tenancy agreement by failing to vacate the rental unit on the date agreed to in the fixed term tenancy agreement, and to recover the cost of the filing fee.

The landlord's agent (the "agent") provided affirmed testimony at the hearing. The tenant did not attend the hearing.

The agent testified that he sent the application, and the Notice of Hearing along with supporting documentary evidence to the tenant on September 13, 2017, by registered mail. I find the tenant received this package on September 18, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

I note that the agent made this application on August 28, 2017, and that he did not give a copy of this application to the tenant within the 3 days allowed under the *Act*. However, pursuant to section 59(3) of the *Act*, I am entitled to specify a different period of time depending on the circumstances. I accept and allow the agent to serve the tenant with the hearing package (application and evidence), as specified above. I find no evidence that the agent intended to mislead, or deceive the tenant by delaying service, and I find it was an honest mistake that does not prejudice the tenant in this proceeding. It was open to the tenant to attend the hearing. However, the tenant did not do so.

The agent was provided the 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.

### Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

### Background and Evidence

A copy of the fixed term tenancy agreement was submitted into evidence. The tenancy began on August 15, 2016 and was scheduled to end on August 31, 2017. Monthly rent of \$895.00 was due on the first day of each month.

As per the documentary evidence, both parties initialed next to the term of the fixed term tenancy agreement which reads that effective August 31, 2017, the tenant must vacate the rental unit.

The agent testified that the tenant is still in the unit. As such, the agent is seeking an order of possession and the recovery of the cost of the filing fee.

### Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

I find the tenancy agreement clearly indicates that the fixed term tenancy required vacant possession of the rental unit as of August 31, 2017 at 1 pm. I find the tenancy ended on this date. Further, I find the tenant breached the tenancy agreement by failing to vacate the rental unit and continue to occupy the rental unit.

Therefore, pursuant to section 55 of the *Act*, I grant the landlord an order of possession **effective two (2) days** after service on the tenant.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was successful in this hearing, I also order the tenant to repay the \$100.00 fee the landlord paid to make the application

for dispute resolution. I find the landlord is entitled to a monetary order in the amount of \$100.00.

### Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order in the amount of **\$100.00** for the cost of filing this application. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: September 29, 2017

---

Residential Tenancy Branch