



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OP & FF

The Application for Dispute Resolution filed by the landlord seeks an Order for Possession on the basis that the tenancy agreement provides that the tenant will vacate the rental unit at the end of the fixed term.

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act provides that a party may serve another by mailing, by registered mail to where the other party resides. Section 90 further provides that it is deemed received 5 days after mailing. I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenant by mailing, by registered mail to where the Tenant resides on January , 2018 and it is deemed receive 5 days after mailing. The documents were returned to the landlord unclaimed. The landlord testified that another tenant has told him that the tenant told the other tenant that he was aware of the documents were at the post office but did not intend to pick them up.

Policy Guideline 12 includes the following:

“Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.”

I determined the tenant has been sufficiently served in accordance with the Residential Tenancy Act despite the fact the tenant failed to pick up the documents. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided:

The issue to be decided is whether the landlord is entitled to an Order for Possession?

Background and Evidence:

The parties initially entered into a 6 month fixed term tenancy agreement that provided that the tenant would have to vacate at the end of the fixed term. The rent was \$700 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$350.

The tenant was not able to find alternative accommodation and requested an extension.

On August 1, 2017 the parties entered into a two month written tenancy agreement that provided that the tenancy would start on August 1, 2017 and end on October 1, 2017 and the tenant would have to vacate at that time.

On July 30, 2017 the landlord entered into a fixed term written tenancy agreement with a third party that provided that the tenancy would start on October 1, 2017 and end on October 1, 2018 and the tenant would have to vacate at that time. The tenant was advised of that there was a third party that had signed a tenancy agreement which provided that he could take possession on October 1, 2017. .

The tenant refused to leave and told the landlord he would have to get a bailiff to remove him. Rather than engage in litigation the landlord agreed to give the tenant an extension. On September 24, 2017 the parties entered into a fixed term tenancy agreement that provided that the tenancy would start on October 1, 2017 and end on February 28, 2018 and the tenant would have to vacate at that time.

On October 1, 2017 the landlord entered into a fixed term written agreement with the third party that the tenancy would start on March 1, 2018 and end on March 1, 2019. The tenant was again advised the new tenant had entered into a tenancy agreement that provided that he would take possession on March 1, 2018.

The tenant(s) has refused to leave and continues to reside in the rental unit. The rent for March was paid by the Ministry and the landlord accepted the payment "for use and occupation only."

The new tenant is asking the landlord when can he take possession.

Analysis:

There has been a change in the law dealing with the landlord's ability to obtain an Order of Possession based on the vacate clause at the end of a fixed term tenancy. The

landlord is only entitled to obtain an Order of Possession in limited situations which do not apply in this case. However, there is a transition provision that applies.

Section 104.3 of the Residential Tenancy Act provides as follows:

**Transition — fixed term tenancy agreements**

**104.3** (1) If a fixed term tenancy agreement entered into before this section comes into force requires that a tenant must vacate the rental unit on a specified date, the requirement to vacate the rental unit ceases to have effect as of the date this section comes into force, except

...

(c) if, before the day this Act receives First Reading in the Legislative Assembly,

- (i) the landlord entered into a tenancy agreement, to begin after the expiry of an existing tenancy agreement that includes a requirement to vacate the rental unit, with a new tenant for the rental unit, or
- (ii) the director granted an order of possession to the landlord on the basis of a requirement to vacate the rental unit in an existing tenancy agreement.

First reading of the bill was on October 26, 2017,

**Analysis - Order of Possession:**

I determined the landlord was entitled to an Order for Possession. Based on the evidence presented at the hearing I determined that the landlord entered into a tenancy agreement to begin after the expiry of an existing tenancy agreement that includes a requirement to vacate the tenant unit, with a new tenant. The new tenant original signed a tenancy agreement to take possession on October 1, 2017. The tenant refused to vacate and the landlord and tenant subsequently entered into a fixed term tenancy agreement that provided that the tenancy would end and the Tenant would vacate on March 1, 2018. On September 30, 2017 (prior to the date of the first reading of the bill) the new tenant signed a tenancy agreement that provided that his tenancy was to start of March 1, 2018.

As a result I granted an Order of Possession. As the rent has been paid for March I set the effective date of the Order of Possession for March 31, 2018.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

**This decision is final and binding on both parties.**

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: March 16, 2018

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Residential Tenancy Branch