



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Dispute Codes      OPM, OPR, MNR, MNSD

## Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlords under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession based on a mutual agreement to end tenancy. The Landlords also filed an Amendment to an Application for Dispute Resolution (the “Amendment”) on May 22, 2018, seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), a Monetary Order for unpaid rent, and a Monetary Order for the payment of the security deposit.

The hearing was convened by telephone conference call and was attended by the Landlords and the Tenant, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

## Preliminary Matters

### **Preliminary Matter #1**

Although the Landlords and I attended the hearing on time and ready to proceed, the Tenant joined the hearing 7 minutes after the scheduled start time of the hearing. Once the Tenant joined the hearing, I advised her of the parties present and recapped the issues discussed in her absence. The hearing then proceeded without further issue.

### **Preliminary Matter #2**

On May 4, 2018, the Landlords filed an Amendment correcting the spelling of the Tenant's name and providing further details about the tenancy. The Landlords testified that the Amendment and all related documents were personally served on the Tenant on May 4, 2018, and the Tenant confirmed receipt on that date.

On May 22, 2018, the Landlords filed a second Amendment seeking an Order of Possession based on a 10 Day Notice and a Monetary Order for rent and the payment of the security deposit. The Landlords testified that the second Amendment and all related documents were personally served on the Tenant on May 22, 2018, and the Tenant confirmed receipt on that date.

Based on the above, I find that the Tenant was served with the first Amendment on May 4, 2018, and the second Amendment on May 22, 2018. The Application was therefore amended pursuant to the *Act* and the Rules of Procedure.

### **Preliminary Matter #3**

Although the only Application before me in the hearing was the Application from the Landlords, the Tenant testified that she had filed her own Application disputing the 10 Day Notice which was to be crossed with this Application. As a result, I conducted a search of the Residential Tenancy Branch (the "Branch") records but was unable to locate an Application filed by the Tenant. I asked the tenant to provide me with the file number of her Application and the Notice of Hearing details but she was unable to do so. As a result, the hearing proceeded as scheduled based only on the Landlords' Application and Amendments.

### **Preliminary Matter #4**

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession based on the Mutual Agreement to End Tenancy (the “Mutual Agreement”) or the 10 Day Notice?

Are the Landlords entitled to a Monetary Order for the unpaid security deposit and unpaid rent?

Background and Evidence

The parties agreed that in late November of 2017, or early December of 2017, the Tenant moved into the rental unit, which is a self-contained basement suite in the single-family home where the Landlords reside in a separate unit upstairs. The parties agreed that at that time, the Tenant was in fact an occupant, as the tenancy agreement was actually between the Landlords and a different person who also resided in the rental unit. The parties agreed that the previous tenant vacated the rental unit on March 31, 2018, in response to a 10 Day Notice and that on approximately March 10, 2018, a verbal tenancy agreement was reached between the Landlords and the Tenant, for her to stay in the rental unit as a tenant under her own tenancy agreement until April 30, 2018. The parties also agreed that rent in the amount of \$1,100.00 was due on the first day of each month and that a security deposit was never paid.

The Landlord testified that a Mutual Agreement was signed on March 13, 2018, stating that the parties mutually agreed to end the tenancy effective April 30, 2018, at 12:00 P.M. and submitted a copy of the Mutual Agreement for my consideration. Although the Tenant agreed that she signed the Mutual Agreement, she stated that she did not understand at the time that she signed it that she was agreeing to end the tenancy.

Both parties also agreed that no rent has been paid for either May or June of 2018.

As a result of the above, the Landlords sought a two day Order of Possession, \$2,200.00 in outstanding rent, and the payment of a \$550.00 security deposit.

Analysis

Section 44(1)(c) of the *Act* states that a tenancy ends if the landlord and tenant agree in writing to end the tenancy.

Although the Tenant stated that she did not understand that she was agreeing to the end of the tenancy when she signed the Mutual Agreement, I am not persuaded by this testimony that the Mutual Agreement is therefore invalid. There is a copy of the written Mutual Agreement in the documentary evidence before me which clearly states at the top, in large bold font, that the document is a "Mutual Agreement to End a Tenancy". It also states that the tenant agrees to vacate the rental unit at 12:00 P.M. on April 30, 2018, and is signed and dated by both parties on March 13, 2018. I find that it was incumbent upon the Tenant to read and understand the document before signing it and I do not find that her failure to do so, willfully or otherwise, releases her from the obligations of the Mutual Agreement. Based on the above and pursuant to section 44 of the *Act*, I therefore find that the tenancy legally ended on April 30, 2018, as a result of the Mutual Agreement, and the Landlord is entitled to an Order of Possession. As the effective date of the Mutual Agreement has passed and the parties agree that no rent has been paid for May or June, the Order of Possession will be effective two days after service on the Tenant.

Given that the tenancy legally ended on April 30, 2018, I find that the Tenant has been overholding the rental unit since May 1, 2018. Residential Tenancy Branch Policy Guideline (the "Policy Guideline") #3 states that a tenant is not liable to pay rent after a tenancy agreement has ended, however, if a tenant remains in possession of the rental unit after the tenancy has ended, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. As a result, of the above, I find that the Landlords are therefore entitled to rent in the amount of \$1,100.00 for May of 2018, and \$806.52 in rent for 22 days in June of 2018, at a per diem rate of \$36.66; \$1,100.00 divided by the 30 days in June, times the 22 days the Tenant has overheld the rental unit as of the date of the hearing. Further to this, the Landlords remain at liberty to file another application seeking further rent on a per diem basis for any additional days the Tenant overholds the rental unit or for loss of rent if they are subsequently unable to re-rent the rental unit due to her overholding.

Although the Landlords also sought \$550.00 as the Tenant never paid a security deposit, a security deposit is meant to be paid to a landlord at the start of the tenancy and is actually held in trust by a landlord throughout the tenancy. As a security deposit only becomes the property of a landlord under the specific circumstances prescribed by the *Act*, I therefore find that it is not money that the Landlords are entitled to now that the tenancy has ended. As a result, I dismiss this claim without leave to reapply. However, both parties should be aware that the Landlords remain at liberty to file a claim for any damage to the rental unit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of **\$1,906.52**. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: June 22, 2018

A handwritten signature in black ink, appearing to read 'K. Akow', is written over a horizontal line.

K. Akow, Arbitrator  
Residential Tenancy Branch