



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNRL, OPL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on December 10, 2018, wherein the Landlord sought an Order of Possession based on a Mutual Agreement to End Tenancy signed on October 26, 2018, monetary compensation for unpaid rent and recovery of the filing fee.

Only the Landlord and her son, G.S., called into the hearing. G.S. gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 9:47 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord, G.S. and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. G.S. testified that he served both the Tenants with the Notice of Hearing and the Application on December 12, 2018 by registered mail. A copy of the registered mail tracking numbers is provided on the unpublished cover page of this my Decision.

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

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 the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of December 17, 2018 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 *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's 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.

### Preliminary Matters

The Landlord inverted the first and surname of the Tenant H.W. on the Application for Dispute Resolution. Pursuant to section 64(3) of the *Act* I amend the Application to correctly name the Tenant. H.W.

G.S. confirmed his email addresses during the hearing as well as his understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation for unpaid rent?
3. Should the Landlord recover the filing fee?

### Background and Evidence

G.S. testified that the tenancy began prior to 2004. He stated that originally his brother purchased the rental property in 2004 following which it was transferred into his parents' names in 2014. When G.S.'s father passed away in 2016 his mother became the sole owner.

G.S. testified that the Tenants pay \$800.00 per month in rent. G.S. stated that the Tenant, H.W., pays \$400.00 per month in cash and the Tenant, D.W.'s rent is paid by the Ministry of Social Development and Poverty Reduction.

The Landlord sent a letter to the Tenants confirming that she wanted to regain possession of the rental unit for her own use. Notably, she did not issue a 2 Month Notice to End Tenancy for Landlord's Use on form #RTB-32.

G.S. stated that the Tenants asked for more time to move out as they were awaiting the completion of renovations to their new rental unit. The parties then discussed and agreed to end the tenancy on November 30, 2018. Their agreement was evidenced by a signed Mutual Agreement to End Tenancy dated October 26, 2018; a copy of which was provided in evidence. The Mutual Agreement provided that the tenancy would end on November 30, 2018.

G.S. stated that the Tenants did not move as promised, claiming the rental unit they were to move to was no longer available to them. He further stated that in December of 2018 he spoke to the Tenants about the fact they had not moved, and confirmed the Landlord's intention to go to the Residential Tenancy Branch to seek an Order of Possession.

G.S. stated that the Tenants failed to pay the December rent and only paid \$400.00 in January; as such, at the time of the hearing the sum of \$1,200.00 was outstanding for rent.

### Analysis

After consideration of the undisputed evidence and testimony before me and on a balance of probabilities I find as follows.

Section 44(1)(c) of the *Act* provides that a tenancy ends when the Landlord and Tenant agree in writing to end the tenancy. In this case, the parties signed a Mutual Agreement to End Tenancy on October 26, 2018; as such, and pursuant to section 44(1)(c) the tenancy ended on November 30, 2018.

I accept G.S.'s evidence that the Tenants did not vacate the rental unit as promised. Pursuant to sections 44(1)(c) and 55 of the *Act* I grant the Landlord an Order of Possession effective two days after service. The Landlord must serve the Order on the Tenants and may file and enforce the Order in the B.C. Supreme Court.

I accept the Landlord's evidence that monthly rent is payable in the amount of \$800.00. I further accept G.S.'s testimony that the sum of \$1,200.00 remains outstanding for December and January, months in which the Tenants have over held their tenancy. I therefore find the Landlord is entitled to the sum of \$1,200.00.

Having been successful in their application, I also award the Landlord recovery of the filing fee for a total of **\$1,300.00**.

In furtherance of this my Decision I grant the Landlord a Monetary Order in the amount of **\$1,300.00**. The Order must be served on the Tenants and may be filed in the B.C. Provincial Court (Small Claims Division) and enforced as an Order of that Court.

### Conclusion

The Landlord's request for an Order of Possession based on the Mutual Agreement to End Tenancy is granted.

The Landlord's request for monetary compensation for unpaid rent and recovery of the filing fee is granted.

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: January 21, 2019

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Residential Tenancy Branch