



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPM, FF, OLC, MNDC

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 18, 2019. Both parties confirmed the tenant served the landlord with the notice of hearing package on December 20, 2018 via Canada Post Registered Mail. Both parties confirmed the tenant served the landlord with his submitted documentary evidence via Canada Post Registered Mail on January 18, 2019. Neither party raised any service issues. As both parties have attended and confirmed receipt of the filed notice of hearing package(s) and the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served as per sections 88 and 89 of the *Act*.

### Preliminary Issue(s)

At the outset, discussions with both parties were clarified regarding their applications for dispute. The landlord seeks an order of possession as a result of a mutual agreement to end tenancy completed by both parties and recovery of the filing fee. The tenant seeks a monetary claim for compensation for the landlord photographing him and an order for the landlord to comply regarding rent increases.

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that the tenant has applied for a monetary order for money owed or compensation for damage or loss, for an order for the landlord to comply with the Act. As these sections of the tenant’s application are unrelated to the main section which is to end the tenancy as a result of a mutual agreement to end tenancy, I dismiss these sections of the tenant’s claim with leave to reapply. The hearing shall proceed on the landlord’s application only.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?  
Is the landlord entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant’s claim and the landlord’s cross claim and my findings around each are set out below.

This tenancy began on January 1, 2018 on a fixed term tenancy ending on September 30, 2018 as per the submitted copy of the signed tenancy agreement dated December 15, 2017. The monthly rent was \$1,100.00 payable on the 1<sup>st</sup> day of each month.

The landlord seeks an order of possession as a result of a mutual agreement to end the tenancy dated September 4, 2018 to end on January 31, 2019.

The tenant stated that he was originally given a notice to end tenancy by the landlord which was replaced by a mutual agreement to end the tenancy. The tenant argues that the landlord has violated the Act by “contracting” outside of the Act by completing a

mutual agreement to end tenancy. The tenant argued that the original tenancy was to end on September 30, 2018 and the landlord entered into a new tenancy agreement with the tenant on a month-to-month basis. The tenant further argued that this was the landlord's attempt to re-rent the unit at a higher rent as per an email exchange dated December 18, 2018.

The landlord stated that the Act does allow for a mutual agreement to end tenancy as per section 44 of the Act. The landlord stated as such, a Residential Tenancy Branch "Mutual Agreement to End a Tenancy" form #RTB-8 was signed and completed by both parties. The landlord provided a copy of a further detailed typed letter, "This is a mutual agreement between:" the two parties dated September 3, 2018 which was signed by both parties. It states in part,

The "two month notice to end tenancy for landlord's use of property" previously served by landlord to tenant is now void, and the tenancy will continue under the same terms.

The tenant hereby agrees to vacate the above named premises on January 31, 2019.

Prior to September 26, 2018, the tenant will give the landlord pre-dated cheques (dated 26<sup>th</sup> of each month) for months of October 2018 through January 2019.

The landlord clarified that this document was drafted by the tenant. The landlord also stated that the tenant had given notice in writing in a letter dated August 31, 2018 requesting an end to the tenancy on January 31, 2019.

In support of these claims, the landlord has provided:

- A copy of a mutual agreement to end tenancy dated September 3, 2018 (Form #RTB-8)
- A copy of a typed letter dated September 3, 2018, a mutual agreement.
- A copy of a handwritten letter dated August 31, 2018 requesting an end to the tenancy on January 31, 2019.

### Analysis

In this case, I accept the undisputed affirmed evidence of both parties and find that a mutual agreement to end tenancy was entered into by both parties dated September 4,

2018. This mutual agreement was further clarified in a mutually signed letter of agreement dated September 4, 2018 drafted by the tenant. This is also further supported by the landlord's submission of a hand written notice dated August 31, 2018 by the tenant requesting that the tenancy end on January 31, 2019.

I reject the tenant's argument that the landlord is contracting out of the Act by entering into a mutual agreement to end tenancy.

Section 44 (1) (c) of the Act allows for the landlord and tenant to agree in writing to end the tenancy. In this case, both parties used the Residential Tenancy Branch #RTB-8 (2014/10) form. Both parties confirmed their understanding of the document and the signatures of both parties were confirmed.

As such, the landlord's application for an order of possession is granted. As the effective end of tenancy date has now passed, I order that the tenant comply within 2 days of receiving the order of possession.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: February 06, 2019

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Residential Tenancy Branch