



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OPM

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession based on a mutual agreement to end tenancy pursuant to sections 44 and 55;

The tenant did not attend this hearing, which lasted approximately 30 minutes. The landlord and the landlord's agent attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent testified that on February 04, 2019, he sent a copy of the Application for Dispute Resolution and Notice of Hearing, along with the landlord's evidence, to the tenant by registered mail. The landlord provided a registered mail receipt and tracking number in support of service.

Section 90 of the Act determines that a document served by registered mail is deemed to have been received five days after service. As such, in accordance with sections 89 and 90 of the Act, I find that the tenant has been deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing, and accompanying evidence, on February 09, 2019, the fifth day after their registered mailing. The hearing proceeded in the absence of the tenant.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 44 and 55 of the Act?

### Background and Evidence

While I have considered all documentary evidence submitted and all oral testimony of the landlord, I will only refer to the evidence and facts which I find relevant in this decision. Not all details of the submissions and / or arguments of the landlord are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below. The landlord provided undisputed evidence at this hearing, as the tenant did not attend.

The landlord testified that in January 2018, he purchased the property which comprises the rental unit. The landlord asserted that he did not inherit any written tenancy agreement from the previous landlord, and to his knowledge, believes that no written tenancy agreement was drafted when the tenancy was entered into approximately four years ago.

The monthly rent was determined to be due on the first day of each month. The current monthly rent is \$675.00, which continues to be due on the first day of each month. The landlord testified that he is not aware if a security deposit or pet damage deposit was collected by the original landlord. The landlord provided that he does not hold any deposit with respect to the tenancy.

The landlord testified that on January 25, 2019 the parties entered into a mutual agreement to end the tenancy with a stated effective vacancy date of April 01, 2019. A signed Mutual Agreement to End Tenancy form was provided by the landlord as evidence.

The landlord testified that the tenant had recently conveyed that due to difficulty in finding new accommodation, the tenant is unwilling to adhere to the terms of the mutual agreement to end tenancy. The landlord provided that the tenant had indicated that he unilaterally declared that he will continue to occupy the rental unit beyond the effective vacancy date of April 01, 2019, and had stated that he may continue to occupy the rental unit extending into the month of May 2019.

The landlord testified that the parties signed the mutual agreement to end tenancy in good faith, and that he made plans on the basis that the tenancy would end on April 01, 2019 pursuant to the mutual agreement. Therefore, as the tenant had declared that he will not vacate the rental unit by April 01, 2019, the landlord seeks an Order of Possession based on the January 25, 2019 Mutual Agreement to End Tenancy form.

### Analysis

Pursuant to section 44(1)(c) of the Act, a tenancy ends if the landlord and tenant agree in writing to end the tenancy. Pursuant to section 55(2)(d) of the Act, a landlord may request an order of possession of a rental unit if the landlord and tenant have agreed in writing that the tenancy has ended.

In accordance with section 44(1)(c), the tenant and landlord agreed in writing that the tenancy will end on April 01, 2019. Therefore, the landlord is entitled to possession of the rental unit on April 01, 2019.

Based on the foregoing, I find that the landlord is entitled an Order of Possession pursuant to section 55(2)(d) of the Act.

### Conclusion

The landlord is provided with an Order of Possession effective by 1:00 p.m. on April 01, 2019. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 20, 2019

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Residential Tenancy Branch