



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1092358 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            OPM, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 14, 2019, wherein the Landlord sought an Order of Possession based on a Mutual Agreement to End Tenancy, and recovery of the filing fee.

The hearing was scheduled for teleconference at 11:00 a.m. on June 27, 2019. Only the Landlord's Agent, K.L., who identified himself as the Director of the numbered company, called into the hearing. He 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 Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:20 p.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 and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's Agent testified that he served the Tenant with the Notice of Hearing and the Application on May 18, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 Tenant was duly served as of May 23, 2019 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 Agent'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's Agent confirmed his email addresses during the hearing as well as his understanding that this Decision would be emailed to him 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. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord's Agent testified that the tenancy began January 2017.

The Tenant signed a Mutual Agreement to End Tenancy on May 1, 2019 confirming that the tenancy would end on June 1, 2019. A copy of the document was provided in evidence.

The Landlord's Agent further testified that the Tenant moved out in early June 2019. She did not pay rent for the month of June 2019.

The Landlord re-rented the rental unit for June 10, 2019.

The Landlord stated that to his knowledge, the Tenant's former boyfriend, N.R., and another friend by the surname, L., remain in the rental unit. As they failed to vacate the rental unit, he compensated the new tenant for the days in June they were not able to reside in the rental unit.

### Analysis

A tenancy may only be ended in accordance with the *Residential Tenancy Act*. Section 44(1)(c) provides that a tenancy may end if a landlord and tenant agree in writing to end the tenancy.

In this case, the parties signed a Mutual Agreement to End Tenancy on May 1, 2019. Pursuant to the agreement, the tenancy ended June 1, 2019.

I therefore find the Landlord is entitled to an Order of Possession effective 2 days after service. Should the Tenant and/or her occupants fail to vacate the rental unit, the Landlord may file and enforce the Order in the B.C. Supreme Court.

Having been successful in this application, the Landlord is entitled to recover the \$100.00 filing fee. Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain \$100.00 from the Tenant's security deposit; the balance of the deposit shall be dealt with in accordance with the *Act*.

The Landlord filed a Monetary Orders Worksheet claiming compensation for the amount he paid the new tenants when the occupants failed to vacate the rental unit. The Landlord did not make a monetary claim in the original application, nor did they file an Amendment. As such, I find the Tenant was not given adequate notice of the Landlord's request for monetary compensation. The Landlord is at liberty to file a further application seeking these sums in addition to any other monetary losses incurred.

#### Conclusion

The Landlord's request for an Order of Possession 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: June 27, 2019

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Residential Tenancy Branch