



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pacific Peace Properties Inc. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPM, FFL

### Introduction

In this dispute, the landlord seeks an order of possession pursuant to section 55 of *Residential Tenancy Act* (the “Act”) and recovery of the filing fee pursuant to section 72 of the Act.

The landlord applied for dispute resolution on May 8, 2019 and a dispute resolution hearing was held on June 24, 2019. The landlord’s counsel and two witnesses, and the tenant, attended the hearing. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Neither party raised any issue with respect to the service of evidence.

I reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

### Issues

1. Whether the landlord is entitled to an order of possession.
2. Whether the landlord is entitled to recovery of the filing fee.

### Background and Evidence

The landlord submitted that the tenant was the previous landlord’s property manager for about a decade. The landlord then assumed ownership of the property and on January 21, 2019 the tenant became an employee of the landlord. A copy of a written tenancy agreement was submitted into evidence by the landlord.

Shortly thereafter, in March 2019, the landlord terminated the tenant's employment. Part of the landlord and tenant's employment severance package included a Mutual Agreement to End a Tenancy (the "MAET"). A copy of the MAET was submitted into evidence. The MAET was signed by the landlord's representative ("S.B."—the landlord's witness) and the tenant on March 13, 2019. The MAET indicated that the tenancy would end, and that the tenant would vacate the rental unit, at noon on May 1, 2019.

The landlord seeks an order of possession of the rental unit, as the tenant continued to reside in the rental unit past May 1, 2019. The tenant testified and confirmed that he continues to reside in the rental unit.

The tenant's primary argument, in regard to the MAET, is that he does remember specifically signing the document. "I don't remember this," he commented. He also noted that he "certainly wasn't myself." The tenant did not have much beyond these brief comments regarding the landlord's submission or application.

Landlord's counsel then cross-examined the tenant and asked him about his recollection of the meeting during which the tenant signed the severance agreement and the MAET. The tenant remembered a meeting but did not recall any specifics. He also commented that he does not ordinarily read everything he signs.

Counsel further asked the tenant whether it was his signature on the MAET, to which the tenant responded, "I signed a paper, I know that." The tenant further stated, in response to counsel's questions, that he was a property manager for ten years and that he was familiar with Residential Tenancy Branch forms, and that he had previously seen the Mutual Agreement to End a Tenancy form once or twice.

In final submissions, landlord's counsel argued that while the tenant appears to raise objection to the MAET on the ground of sound mind, his evidence is not compelling in respect of signing the agreement.

He further argued that, taking into consideration the tenant's lengthy experience as a property manager, and common sense, that the tenant knows about the Mutual Agreement to End a Tenancy form and understands what it is. Finally, he argued that the tenant has not filed any cross-application disputing the MAET.

The tenant submitted that he did not "recall everything about that meeting," that "I know I did sign a thing [regarding termination]," and that "I don't really know what I signed."

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Subsection 55(2)(d) of the Act states that a landlord may request an order of possession of a rental unit when “the landlord and tenant have agreed in writing that the tenancy is ended.”

In this dispute, the landlord and tenant agreed in writing on March 13, 2019 that the tenancy would be ended on May 1, 2019. The MAET establishes that this agreement to end the tenancy was in writing. And, while the tenant explained that he did not recall the details of the severance meeting or what he was signing, he did not at any point, either during his testimony or under cross-examination, deny that he signed the MAET.

While the tenant seems to have raised, albeit rather indirectly, a potential issue regarding the state of his mind or mental capacity at the time he signed the MAET, he provided no specific testimony as to what, if any, such issues there were. He submitted no documentary evidence to support any such argument on the issue of capacity. As such, while I recognize that the tenant claims not have remembered what he signed, there is no evidence for me to find that issues of capacity arise in this dispute.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their case for an order of possession under section 55 of the Act.

As such, I grant the landlord an order of possession of the rental unit.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee.

As the applicant was successful I grant their claim for reimbursement of the filing fee in the amount of \$100.00.

### Conclusion

I grant the landlord an order of possession, which must be served on the tenant and is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$100.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial 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 of the Act.

Dated: June 24, 2019

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Residential Tenancy Branch