



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1169880 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPT, FF

### Introduction

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

- an order of possession of the rental unit pursuant to section 54;
- authorization to recover its filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via XpressPost. The landlord stated that the tenant was served with their submitted documentary evidence via Canada Post Registered Mail on August 21, 2019 to the provided address on the tenant's application for dispute. The landlord stated that this was returned as "unclaimed". Both parties clarified that the address provided by the tenant was the dispute address. Both parties confirmed that the tenant did not have control or access to mail. The landlord stated that a further attempt was made serving the tenant (a numbered company) at their listed business address. The landlord confirmed that the package was received and signed for. The tenant has argued that they are essentially "homeless" and do not have a choice for listing an address as they are currently staying in a hotel.

At the conclusion of the hearing, the landlord stated that a new tenant had been obtained and is now occupying the rental space. The tenant disputed this claim arguing that the landlord has failed to provide any evidence of a new tenant. The landlord stated that he would be able to provide a copy of a signed tenancy agreement to support this claim. Further discussions resulted in the landlord being provided a limited time to submit a copy of an unredacted signed tenancy agreement to both the

Residential Tenancy Branch and the tenant. The tenant was also given until September 6, 2019 to provide any rebuttal submissions of evidence regarding the new tenant.

A review of the landlord's submitted copy of a signed and dated tenancy agreement appears to show a valid tenancy agreement with a new tenant which began on August 1, 2019 and entered into on August 2, 2019. The tenant submitted written submissions that make note of several factors, but concedes that the signed tenancy agreement appears valid.

Section 51 of the Residential Tenancy Branch Policy Guidelines, Expedited Hearings regarding Orders of Possession for a Tenant state in part,

*...Tenants should be aware that the director may not be able to grant an order of possession to a tenant in circumstances where another renter is occupying the rental unit; however, the tenant may file a separate application for monetary compensation from the landlord for any damage or loss they may have suffered.*

*If a tenant applies for an order of possession, they must be able to prove that a tenancy agreement exists between the tenant and the landlord.*

In this case, I find in the circumstances that the tenant's request for an order of possession is dismissed without leave to reapply as the rental unit is being occupied by another tenant as shown from the landlord's copy of the submitted signed tenancy agreement.

The tenant has also made submissions seeking a finding that a tenancy agreement existed between the two parties.

During the originally scheduled hearing the following submissions were made on whether a tenancy agreement was made between the two parties. The tenant stated that the landlord provided a tenancy agreement and required a security deposit which was paid by the tenant, which the landlord accepted. The tenant stated that the landlord provided access for internet installation on July 31, 2019 and then cancelled the move-in inspection on August 1, 2019. The tenant stated that the landlord refused access to the rental unit.

The landlord disputes the tenant's claim arguing that negotiations took place over an extended period of time in which the terms were never agreed upon. The landlord

stated that as a result negotiations with another prospective tenant were successful and that tenancy began on August 1, 2019 as shown by the submitted tenancy agreement.

The tenant has stated that a tenancy agreement was agreed to begin on August 1, 2019 for a two year term ending on July 31, 2021, monthly rent at \$6,200.00 and a security deposit of \$3,100.00. The tenant stated that arrangements were made to terminate its temporary accommodations on August 1, 2019. The tenant argues that the landlord's agent, C.B. made repeated verbal statements accepting the terms made with the landlord. The tenant stated that in reliance of the accepted terms of the tenancy agreement, the tenant obtained an insurance quote for the new tenancy. The tenant stated that the landlord's agent, C.B. advised the tenant via telephone the landlord had approved the tenancy and made arrangements to pay the security deposit via direct deposit. The landlord's agent provided the landlord's account details. The tenant stated that the listing for the rental premises was removed on July 27, 2019. The tenant argues that as of July 27, 2019, the tenant and the landlord had entered into an agreement for a tenancy to lease the premises. The tenant also advises that early access was requested of the landlord on July 29, 2019 to facilitate internet access and was advised via email by the landlord's agent that this would be acceptable. The tenant stated that on July 31, 2019, the landlord's agent provided access to the tenant to install internet services. This visit took over 2 hours with both the tenant and the landlord's agent present. The tenant claims that the landlord presented a tenancy agreement on July 31, 2019 to the tenant with an additional addendum previously not given to the tenant. The tenant advised the landlord that the addendum needed to be reviewed by counsel, but expected no issues. On August 1, 2019, the tenant opened an insurance policy for the new tenancy. The tenant provided at 12:28 pm on August 1, 2019 via email a signed addendum to the tenancy agreement agreeing to the terms as requested by the landlord. The tenant stated that the landlord's agent received and reviewed the documents at 3:53pm. The tenant arrived at the rental premises at 1:30pm waiting for access. The tenant stated that repeated attempts at communicating with the landlord's agent were unsuccessful until an email response from the landlord's agent at 9:27pm. The landlord's email stated that the landlord had decided not to enter into a tenancy agreement with the tenant.

The landlord argues that this was a long negotiation on the terms of the tenancy agreement. The landlord's agent, C.B. stated that there were lots of "going back and forth" between the parties. The landlord argues that the tenant was given the landlord's banking information as part of the process to facilitate the payment of a security deposit when and if the terms for a tenancy agreement was made. The landlord stated that the account details were provided to the tenant at his request to facilitate the direct deposit

when the tenancy agreement terms had been accepted by both parties. The landlord argues that on-going negotiations took place well after July 27, 2019 as indicated in the tenant's submissions and as noted by the tenant on and into August 1, 2019. The landlord stated that at no time was a signed agreement made with the tenant.

In reviewing the submission of both parties, I find that a tenancy agreement was not created. Both parties have provided extensive submissions on the tenancy agreement negotiations and timelines. I prefer the evidence of the landlord over that of the tenant in that negotiations were and had taken place up to and into August 1, 2019. This is indicated in the in the tenant's submission that the offered addendum was not accepted until 12:28pm on August 1, 2019 and then returned to the landlord for acceptance. This confirms the landlord's claims that negotiations took place well into the possession date. I find that it was reasonable in the circumstances that until the landlord received confirmed acceptance of those terms, that an agreement was not made between the two parties despite the tenant using a direct deposit to the landlord's account for a security deposit. This also shows that the landlord was in negotiations with another party for this rental premises. I find that email communications throughout negotiations show that the landlord's agents were optimistic in concluding an agreement up to and including August 1, 2019. Evidence submissions also show that on August 2, 2019, the landlord attempted to return the security deposit. The tenant has failed to provide sufficient evidence that a tenancy agreement was entered into between the two parties.

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: October 3, 2019

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Residential Tenancy Branch