



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPT, FF

### Introduction

On December 13, 2019, the Tenant applied for an expedited dispute resolution hearing under the *Residential Tenancy Act* (“the Act”) seeking an order of possession for the rental unit, and to recover the cost of the filing fee. The Director of the Residential Tenancy Branch has established the expedited hearing process in circumstances that include when a Tenant has been denied access to their rental unit.

The matter was scheduled for a teleconference hearing. The Tenant and the Landlord’s agent (“the Landlord”) were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The parties agreed at the hearing that the rental unit in dispute is for unit #201. I hereby amend the Tenant’s application to include unit #201 as the dispute address.

### Issue to be Decided

- Does the Tenant have a legal right to possess the rental unit and should the Tenant receive an order of possession?

### Background and Evidence

The Tenant testified that she met with an agent of the Landlord on December 3, 2019 to view a basement unit at a monthly rent of \$1,950.00. The Tenant testified that she viewed another rental unit at a monthly rent of \$2,050.00. The Tenant testified that she applied for the basement unit and was accepted and instructed to pay the Landlord a security deposit and pet damage deposit. The Tenant testified that on December 4, 2019, she paid the Landlord a security deposit of \$975.00 and a pet damage deposit of \$600.00 via internet direct billing.

The Tenant testified that on December 5, 2019, the Landlord contacted her to inform her that there had been a mistake and the basement rental unit had already been rented to another person. The Tenant testified that the Landlord offered her another rental unit (#201) in the building at the same monthly rent and the Tenant agreed to the offer for a possession date of December 31, 2019.

The Tenant provided a copy of a tenancy agreement and addendum that she received from the Landlord. The tenancy agreement indicates that the rental unit is #201 and that rent is \$1,950.00 each month and that a security deposit of \$975.00 and a pet damage deposit of \$600.00 is required. The tenancy agreement is signed by the Tenant and is dated December 7, 2019. The Tenant testified that she returned the tenancy agreement to the Landlord.

The Tenant testified that on December 11, 2019 the Landlord contacted her and asked her to pay a higher amount of rent. The Tenant testified that the parties negotiated but the Tenant did not agree to pay an increased amount of rent.

The Tenant testified that the Landlord informed her that the rental unit may no longer be available to her if she does not agree to pay a higher monthly rent.

The Tenant applied for dispute resolution on December 13, 2019 requesting an order of possession for the rental unit.

The Tenant is seeking an order of possession for the rental unit effective December 31, 2019 and for the Landlord to comply with the term that rent is \$1950.00 each month.

In reply, the Landlord testified that she agrees that what the Tenant has provided is accurate. The Landlord testified that the owner of the unit would not agree to less than \$2,200.00 rent each month. The Landlord testified that she offered for the Tenant to pay \$2050; however, the Tenant wants \$1,950.00. The Landlord pointed out that the tenant signed and returned the tenancy agreement to the Landlord after she had already been informed that the monthly rent amount was incorrect.

The Tenant acknowledged that she did sign the tenancy agreement and return it after the Landlord informed her of the discrepancy in the amount of rent. The Tenant acknowledges that the Landlord made a mistake; however, she wants the Landlord to honor the tenancy agreement.

The Tenant submitted that the security deposit and pet damage deposit she paid for unit B01 was transferred by the Landlord to the tenancy for unit #201.

The Landlord testified that if the new tenancy came to fruition, the Landlord would have asked the Tenant for an increased deposit.

The Landlord testified that the rental unit is available for the Tenant to move in on December 31, 2019.

### Analysis

The Act provides that "tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement. "tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 16 of the Act provides that the rights and obligations of a Landlord and Tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the Tenant ever occupies the rental unit.

The basic components of a contract are:

- offer;
- acceptance;
- consideration; and

- capacity.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties entered into a tenancy agreement on December 4, 2019 when the Tenant paid, and the Landlord accepted the security deposit and pet damage deposit for unit B01. I find that the parties agreed to resolve the conflict that unit B01 was not available when the Tenant accepted the Landlords offer to rent unit #201. I find that the parties orally agreed upon the terms of tenancy on December 5, 2019. The Landlord made an offer and the Tenant accepted, and the Landlord had received consideration of the deposits. There were no submissions made regarding capacity, and I find that both parties entered into the above voluntarily and free from any undue influence, understanding the nature of the agreement.

I find that the Landlord provided the Tenant with a tenancy agreement on December 5, 2019 and the Tenant signed the agreement and later returned it to the Landlord. This agreement formalized the legal verbal contract that was agreed upon by the parties on December 5, 2019.

I find that the Tenant has a legal right to possess the rental unit on December 31, 2019. The Landlord is in agreement regarding the Tenants right to possess the rental unit on December 31, 2019. Out of an abundance of caution, I am granting the Tenant an order of possession for the rental unit to be served on the Landlord should it be required.

With respect to the monthly rent. The Landlord testified that the Tenant was informed the monthly rent was \$2,050.00 and the Tenant agreed. I find that there is insufficient evidence from the Landlord to support that the Tenant entered into an agreement to pay \$2,050.00. The emails provided by the Landlord indicate that the Tenant was not interested in settling the matter for \$2,050.00 per month. On December 14, 2019 the Tenant asked the Landlord to give her the apartment for the price entered on the contract. I accept that the Landlord may have made an error by providing a tenancy agreement showing the monthly rent as \$1,950.00 for unit #201; however, I find that the tenancy agreement showing the rent as \$1,950.00 per month is the better evidence that establishes the monthly rent was offered at \$1,950.00 and accepted.

I find that the tenancy agreement requires the Tenant to pay rent in the amount of \$1,950.00 by the first day of each month.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold the amount of \$100,.00 from one (1) future rent payment.

### Conclusion

I find that the parties orally agreed upon the terms of tenancy on December 5, 2019. The Landlord made an offer and the Tenant accepted, and the Landlord had received consideration of the deposits.

I find that the Tenant has a legal right to possess the rental unit on December 31, 2019. I grant the Tenant an order of possession effective December 31, 2019.

I find that the tenancy agreement showing the rent as \$1,950.00 per month is the better evidence that establishes the monthly rent will be \$1,950.00 each month.

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: December 23, 2019

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Residential Tenancy Branch