



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPM, FFL

### Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that the Dispute Resolution Package and a copy of the mutual agreement to end the tenancy were personally served to the Tenant's wife, although he cannot recall the date of service.

The Agent for the Tenant stated that the Tenant is his father; that his father passed away in August of 2019; that he is representing his father at these proceedings; and that the aforementioned documents were received from his brother, although he does not know when they were received. As the Agent for the Tenant acknowledged receipt of these documents, the evidence was accepted as evidence for these proceedings.

On December 13, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was left in the Landlord's mailbox on December 13, 2019. The Landlord stated that this evidence was not received.

The parties were advised that I could not accept the Tenant's evidence, as the Landlord did not acknowledge receipt of it. The Tenant was advised that he could discuss this evidence during the hearing and that if, at any point during the hearing the Agent for the Tenant deemed it necessary for me to physically view his evidence, he could request an adjournment for the purposes of re-serving this evidence. At the conclusion of the

hearing the Tenant stated that he did not feel it was necessary for me to physically view his evidence, and the hearing was concluded.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession on the basis of a mutual agreement to end the tenancy?

### Background and Evidence

The Landlord and the Agent for the Tenant agree that:

- this tenancy began in November of 2015;
- the Landlord and the named Respondent signed a tenancy agreement, which names the named Respondent as the sole tenant;
- the Tenant and his family lived in the rental unit;
- the Landlord and the Tenant signed a Mutual Agreement to End Tenancy, which declared that the tenancy would end on July 31, 2019; and
- the Tenant's family still lives in the rental unit.

The Agent for the Tenant stated that:

- in June of 2019 he spoke with the Landlord and the Landlord told him his family did not need to vacate the rental unit on the basis of the mutual agreement that had been signed;
- in June of 2019 they agreed that his family would vacate the rental unit once the Landlord provided them with two month's notice of the date the Landlord wanted them to vacate;
- after agreeing to extend the tenancy past July 31, 2019, the Landlord never provided them with a date on which the rental unit should be vacated;
- this family continued to pay monthly rent;
- when the rent was paid there was never a discussion about the tenancy ending; and
- he was surprised to receive this Application for Dispute Resolution, because the Landlord never gave them a date to vacate.

The Landlord stated that:

- the Agent for the Tenant asked to extend the tenancy past the end date noted on the mutual agreement to end tenancy;
- he agreed to that request;
- he never provided the Agent for the Tenant or his family with a date to vacate the rental unit;
- he kept encouraging the family to find new accommodations; and
- every time he collected rent, he encouraged the Tenant to find new accommodations, although an actual end date was never discussed.

### Analysis

On the basis of the undisputed evidence I find that the Landlord and the Tenant signed a Mutual Agreement to End Tenancy, which declared that the tenancy would end on July 31, 2019.

I find that the Landlord and the Tenant subsequently mutually agreed to waive the Mutual Agreement to End Tenancy. In reaching this conclusion I was influenced by:

- the undisputed evidence that prior to July 31, 2019, the Landlord and the Agent for the Tenant mutually agreed that the Tenant's family would continue to live in the rental unit past July 31, 2019;
- the undisputed evidence that the Landlord continued to accept rent for the rental unit after July 31, 2019, without ever declaring that he considered the tenancy to be over on the basis of the Mutual Agreement to End Tenancy;
- the undisputed evidence that the Landlord continued to accept rent for the rental unit after July 31, 2019, without declaring that the rental unit must be vacated on any particular date; and
- the undisputed evidence that the Landlord continued to accept rent for the rental unit after July 31, 2019, without declaring that the rent was being accepted for "use and occupancy only".

As I have found that the Landlord and the Tenant mutually agreed to waive the Mutual Agreement to End Tenancy, I find that the tenancy did not end on the basis of that agreement. I therefore dismiss the Landlord's application for an Order of Possession on the basis of the Mutual Agreement to End the Tenancy.

As the Landlord has failed to establish the merit of his Application for Dispute Resolution has merit, I dismiss the application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

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 20, 2019

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Residential Tenancy Branch