



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0829388 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPB, FFT

### Introduction

This hearing dealt with an application from the landlord pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for:

- An order of possession to end tenancy pursuant to section 44 and 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord’s agent SA attended via conference call hearing. The landlord’s agent was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:43 a.m. to enable the tenant to call into the teleconference hearing scheduled for 9:30 a.m.

The landlord’s agent testified the tenants were served the Notice of Dispute Resolution Proceeding together with the evidentiary materials via registered mail on December 19, 2020, accordingly, I find the tenants were served on December 24, 2019, with the hearing documents in accordance with section 88 and 89 of the *Act*.

### Preliminary issue: The tenants’ attendance

Rules of Procedure 7.3 states:

7.3 Consequences of not attending the hearing. If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

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Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to sections 44 and 55 of the *Act*?

Is the landlord entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord seeks an order of possession as a result of the mutual agreement to end the tenancy dated December 12, 2019, effective February 29, 2020.

The tenants and the landlord each signed this agreement, which requires the tenants to vacate the rental unit on February 29, 2020 by 1:00 pm. The landlord's agent entered a copy of this agreement into evidence.

There was no representation or attendance by the tenants at the hearing. I find that a second mutual agreement to end tenancy dated was entered into by both parties on December 12, 2019, as the first Mutual Agreement stated an incorrect date of December 11, 2019. I accept the landlord agent's testimony that all parties wished to end the tenancy and agreed to sign the mutual agreement.

At the hearing, the landlord's agent stated that they seek an order of possession effective February 29, 2020.

Analysis

Section 44(1)(c) of the *Act*, allows for the landlord and tenants to agree in writing to end the tenancy. In this case, both parties used the Residential Tenancy Branch RTB-8 form to end the tenancy.

I find that the mutual agreement to end tenancy is a valid agreement between the parties and in compliance with the *Act*.

I accept the landlord agent's testimony that the tenants have not yet vacated the rental unit. I find that the tenants are obligated to vacate the rental unit on February 29, 2020 in accordance with the terms of the mutual agreement to end tenancy.

As such, the landlord is entitled to an order of possession, pursuant to section 55(2)(d). I grant an order of possession effective February 29, 2020.

Conclusion

I grant an order of possession to the landlord effective February 29, 2020 at 1:00 p.m. pursuant to section 55 of the *Act*. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file, the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I order that the landlord serve a copy of this decision if the tenants fail to vacate the rental unit on February 29, 2020 by 1:00 p.m.

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: February 05, 2020

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Residential Tenancy Branch