



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPM

### Introduction

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

- an order of possession based on a mutual agreement to end tenancy, pursuant to section 55.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 15 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The tenant stated that she did not submit any evidence for this hearing.

### Issue to be Decided

Is the landlord entitled to an Order of Possession based on a mutual agreement to end tenancy?

### Background and Evidence

Both parties agreed to the following facts. The tenant began her tenancy around October 2018 with the former landlord. The landlord named in this application purchased the rental unit on August 1, 2019 and continued the tenant's tenancy on a month-to-month basis. Monthly rent in the amount of \$1,350.00 was payable on the first

day of each month. A security deposit of \$500.00 and a pet damage deposit of \$100.00 were paid by the tenant and the landlord continues to retain both deposits. Both parties signed a written tenancy agreement, which was provided for this hearing.

Both parties agreed to the following facts. The tenant did not get written or verbal permission from the landlord to have roommate MR ("occupant") move into the rental unit. The occupant moved in with the tenant in November 2019. The landlord and the tenant signed a mutual agreement to end tenancy, dated February 1, 2020, for the tenant to vacate by 12:00 p.m. on February 29, 2020 ("mutual agreement"). The tenant vacated the rental unit on February 29, 2020 but the occupant did not and continues to reside in the rental unit. The tenant told the occupant that she was required to leave pursuant to the mutual agreement, but she refused to do so.

The landlord stated the following facts. No written tenancy agreement was signed between the landlord and the occupant, although it was discussed. The landlord notified the occupant that he was not entering into a tenancy agreement with her and that she would have to vacate the rental unit, but she refused. The landlord collected rent from the occupant for March and April 2020 but issued receipts for "use and occupancy only; does not reinstate tenancy" to the occupant for each payment. No rent has been paid by the occupant for May 2020.

The landlord seeks an order of possession based on the mutual agreement. He claimed that although the tenant already vacated, the occupant has not, even though she was required to vacate when the tenant did. The tenant stated that she has no objection to an order of possession being issued against her for the rental unit, since the occupant was supposed to leave with her, pursuant to the mutual agreement.

### Analysis

Section 44(1)(c) of the *Act* states the following with respect to ending a tenancy:

*44 (1) A tenancy ends only if one or more of the following applies:*

*(c) the landlord and tenant agree in writing to end the tenancy;*

Residential Tenancy Policy Guideline 13 states the following with respect to occupants:

*Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.*

Residential Tenancy Policy Guideline 19 states the following with respect to roommates and occupants:

*Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.*

Section 34 of the *Act* states that the tenant cannot assign or sublet the rental unit without the landlord's written consent. In this case, I find that the tenant did not sublet the rental unit to the occupant, as she did not leave the rental unit and then return, having signed a separate sublet agreement with the occupant. I find that the tenant did not assign the rental unit, as there was no assignment agreement signed between the tenant and occupant and the landlord did not consent.

Both parties agreed that the landlord and tenant signed a mutual agreement to end tenancy on February 1, 2020 to end the tenancy by 12:00 p.m. on February 29, 2020. A copy of the mutual agreement was provided for this hearing. The tenant and any other occupants were required to vacate by the above date and time; yet the occupant remained without the landlord's permission.

As per Residential Tenancy Policy Guidelines 13 and 19 above, I find that the occupant has no rights or obligations under the tenant's tenancy agreement. No written tenancy agreement was signed between the landlord and occupant, no verbal agreement was reached, and the landlord did not provide written or verbal permission for the tenant to assign or sublet or have another occupant at the rental unit. The landlord accepted the rent from the occupant for March and April 2020, on the basis of use and occupancy only, which I find did not reinstate the tenancy.

On a balance of probabilities and for the reasons stated above, I find that the landlord is entitled to an order of possession against the tenant and any other occupants, effective two (2) days after service on the tenant, pursuant to section 55 of the *Act*. I find that all occupants did not vacate the rental unit as required by the mutual agreement, only the tenant did. Since the February 29, 2020 date in the mutual agreement has passed, I find that the landlord is entitled to an immediate order of possession.

Conclusion

I grant an Order of Possession to the landlord against the tenant and any other occupants effective **two (2) days** after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme 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(1) of the *Residential Tenancy Act*.

Dated: May 01, 2020

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Residential Tenancy Branch