



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capreit Limited Partnership  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPN, FFL**

### **Introduction**

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

- An Order of Possession for a tenant's Notice to End Tenancy pursuant to sections 45 and 55; and
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he sent each of the tenants a copy of the Notice of Dispute Resolution Proceedings packages by registered mail to their residential addresses on July 6, 2020. Tracking numbers for the registered mailings are recorded on the cover page of this decision. The tenants are deemed served with the Notice of Dispute Resolution Proceedings packages on July 11, 2020, five days after being sent by registered mail in accordance with sections 89 and 90 of the Act.

### **Preliminary Issue**

The landlord's Application for Dispute Resolution did not specify a unit number. The landlord sought to amend the application to reflect the unit number of the building where the tenants lived. The application was amended in accordance with section 64(3) of the Act and the full address is noted on the cover page of this decision.

### Issue(s) to be Decided

Should the tenancy end based on the tenants' notice to end tenancy?

Can the landlord recover the filing fee?

### Background and Evidence

The landlord provided the following undisputed testimony. The fixed one-year tenancy began on November 1, 2019, becoming month to month at the end of the fixed term on October 31, 2020. Rent was set at \$1,725.00 per month payable on the first day of each month. A security deposit of \$862.50 was collected from the tenants which the landlord continues to hold.

On April 30, 2020, the tenants provided the landlord with a written notice to end the tenancy on July 1, 2020. A copy of the letter was provided as evidence by the landlord. On May 4, 2020, the landlord provided a response letter to the tenants.

The letter acknowledges receipt of the tenants' notice to terminate the tenancy effective June 30, 2020 but advises the tenants that they are unable to accept the notice 'due to late submission'. The letter goes on to quote what is referred to as "*Residential Tenancy Act 12.1*" regarding the tenant's duty to ensure the landlord receives notice within stated timeframes. I note here that no such section of the *Residential Tenancy Act* exists.

The landlord's agent testified that this letter is a form letter sent out to tenants who end tenancies before the end of the fixed terms. Although it bears his name and he read it before sending it out, he did not draft the letter. He acknowledges the content of the letter doesn't convey the intent of the landlord since they 'took the tenants off their books' when the letter was received and the landlord now considers the tenants to be overholding. The landlord is not seeking to recover penalties or compensation from the tenants; they simply want an Order of Possession based on the tenants' Notice to End Tenancy.

### Analysis

Pursuant to section 44(1)(a)(i), a tenancy ends when a tenant gives a notice to end tenancy in accordance with section 45.

Section 45(4) states a notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*]. I have reviewed the tenants' notice and note that it is signed and dated April 30, 2020, gives the address of

the building, and provides an effective date of July 1, 2020. Although the tenants' notice is missing the unit number, pursuant to section 62(2) of the Act, I find the content of the notice is valid in context.

Although the parties entered into a fixed term tenancy which prevents either party from ending the tenancy any earlier than the date specified in the tenancy agreement as the end date of the tenancy, the landlord stated during the hearing that he is not seeking any penalties or compensation from the tenants for ending the tenancy early. Given this acknowledgement and since I have found the tenants' notice complies with section 52 in form and content, I uphold the tenants' Notice to end tenancy, effective July 1, 2020. As that date has passed, the landlord is entitled to an Order of Possession effective 2 days after service upon the tenants.

The landlord was successful in his application. The landlord is awarded the filing fee of \$100.00. In accordance with the offsetting provisions of section 72 of the Act, the landlord may retain \$100.00 of the tenants' security deposit in full satisfaction of the monetary order.

#### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants 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: July 28, 2020

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Residential Tenancy Branch