



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**     OPM, FFL

### **Introduction**

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

- an order of possession based on a mutual agreement to end tenancy pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:45 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord's owners ("**LD**" and "**DD**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 LD, DD, and I were the only ones who had called into this teleconference.

LD testified she served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on June 10, 2020. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with this package on June 15, 2020, five days after LD mailed it, in accordance with sections 88, 89, and 90 of the Act.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover their filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord's owners, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting December 1, 2019 and ending February 29, 2020. It has since become a month-to-month tenancy. Monthly rent is \$1,000 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$500, which the landlord continues to hold in trust for the tenant.

The parties entered into a mutual agreement to end tenancy (the “**Mutual Agreement**”), using the proscribed form (#RTB-8). LD testified that she signed it on behalf of the landlord on March 4, 2020 and sent it via email to the tenant. The tenant e-signed it using “DocuSign” on March 7, 2020 and returned it to LD. The Mutual Agreement specified an end of tenancy date of April 30, 2020 at 1:00 pm. The landlord submitted a copy of the Mutual Agreement into evidence.

LD testified that, in breach of the Mutual Agreement, the tenant did not vacate the rental on April 30, 2020, and continues to reside in the rental unit.

### **Analysis**

Section 44(1)(c) allows landlords and tenants to enter into an agreement to end a tenancy. It states:

#### **How a tenancy ends**

- 44(1)**A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
    - [...]
    - (c) the landlord and tenant agree in writing to end the tenancy;

As such, and having reviewed the document submitted into evidence, I find that the Mutual Agreement is valid and enforceable.

I accept LD’s uncontroverted evidence that the tenant has not yet vacated the rental unit. This is a breach of the Mutual Agreement.

As such, I find that the landlord is entitled to an order of possession, effective two days after the landlord serves the tenant with a copy of this decision and the attached order, pursuant to section 55(2)(d), which states:

#### **Order of possession for the landlord**

- 55(2)** A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover their filing fee from the tenant. Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of this amount. The landlord must address the balance of the security deposit in accordance with the Act.

### **Conclusion**

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision.

Pursuant to section 72 of the Act, the landlord may retain \$100 of the security deposit in satisfaction of its claim to recover its filing fee.

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 6, 2020

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Residential Tenancy Branch