



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPM MNDLS FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for an order of possession based on a Mutual Agreement to End Tenancy (mutual agreement), for \$800.00 in damages to the unit, site or property, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated August 10, 2020 (Notice of Hearing), application and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on August 11, 2020. The landlord provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the tenant and the rental unit address, and that the tenant continues to occupy the rental unit. Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the Act. The registered mail tracking number has been included on the style of cause for ease of reference.

According to the Canada Post online registered mail tracking website, the registered mail package was delivered on August 13, 2020. Given that signatures are not requested during the current COVID-19 pandemic, I will use the deemed service provision of the Act, and I find the registered mail package was deemed served as of August 16, 2020, which is five days after August 11, 2020. Given the above I find the

tenant was sufficiently served in accordance with the Act. I find that the application is unopposed as the tenant was served and did not attend the hearing.

### Preliminary and Procedural Matters

Firstly, the landlord confirmed the email address for the landlord at the outset of the hearing. The landlord also confirmed that they did not have an email address for the tenant. As a result, this decision and any resulting orders will be emailed to the landlord, and the decision will be sent by regular mail to the tenant.

Secondly, the landlord corrected the spelling of their first name, which I have amended pursuant to section 64(3)(c) of the Act.

Thirdly, I find the damages portion of this application to be premature, as the tenant continues to occupy the rental unit. As a result, I sever the damages claim pursuant to Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). The landlord is at liberty to reapply for damages, if necessary.

### Issues to be Decided

- Is the landlord entitled to an order of possession based on a mutual agreement between the parties?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 1, 2017 and reverted to a month to month tenancy after October 31, 2018. The landlord testified that the tenant paid a security deposit of \$700.00 at the start of the tenancy, which the landlord continues to hold.

A copy of the mutual agreement dated June 29, 2020 was submitted in evidence and is signed by the parties and indicates that the tenancy will end on August 30, 2020. The landlord stated that tenant has not vacated but has lately promised to vacate by September 15, 2020. The landlord stated that money for use and occupancy for September 2020 has been paid by the tenant to the landlord.

The landlord is also seeking the recovery of the cost of the filing fee.

### Analysis

Based on the undisputed documentary evidence from the landlord and undisputed testimony from the landlord, and on the balance of probabilities, I find the following.

**Order of possession** - I find that pursuant to section 44(1)(c) of the Act the parties mutually agreed in writing to end the tenancy on August 30, 2020. This is supported by the mutual agreement submitted in evidence. Therefore, I find the tenancy ended on August 30, 2020 at 1:00 p.m. I find that the tenant has been over-holding in the rental unit since that date and time. Therefore, I grant the landlord an order of possession effective **September 30, 2020 at 1:00 p.m.** I have used that date and time as the landlord testified that the tenant has paid for use and occupancy for September 2020.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act. I authorize the landlord to deduct **\$100.00** from the tenant's \$700.00 security deposit in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 67 and 72 of the Act. I find the tenant's security deposit is now \$600.00 as a result, effective immediately pursuant to section 62(3) of the Act.

### Conclusion

The landlord's application is successful.

The tenancy ended August 30, 2020 at 1:00 p.m. The landlord has been granted an order of possession effective September 30, 2020 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenant is cautioned that costs of such enforcement may be recoverable from the tenant by the landlord.

The landlord has been authorized to deduct \$100.00 from the tenant's \$700.00 security deposit in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 67 and 72 of the Act. The tenant's security deposit is now \$600.00, effective immediately.

This decision will be emailed to the landlord and sent by regular mail to the tenant. The order of possession will be emailed to the landlord only for service on the tenant.

The landlord's claim for damages was severed under Rule 2.3 of the RTB Rules, and as a result, the landlord has liberty to reapply for any damages to the rental unit.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 4, 2020

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Residential Tenancy Branch