



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPM, MNDCL, MNDL, FFL

### Introduction

This hearing dealt with the Landlord's Application filed under the Residential Tenancy Act (the "Act"), for an order of possession pursuant to section 55 of the Act, for a monetary order for compensation for my monetary loss or other money owed, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord, the Landlord's Agent (the "Landlord") and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters

I have reviewed the Landlord's application, and I note that they have applied to enforce a mutual agreement to end tenancy as well as another issue. I find that these other issues are not related to the Landlord's request to cancel the Notice. As these other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Landlord's claim for a monetary order for compensation for my monetary loss or other money owed, and for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property.

#### Issues to be Decided

- Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?
- Is the Landlord entitled to the recovery of the filing fee of their application?

#### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement records that this tenancy began on September 24, 2020, that rent in the amount of \$2,100.00 is to be paid by the first day of each month, and the Landlord is holding a \$1,050.00 security deposit and a \$1,050.00 pet damage deposit for this tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they signed a mutual agreement to end this tenancy with the Tenants on December 20, 2020, to end this tenancy as of March 31, 2021. The Landlord provided a copy of the mutual agreement into documentary evidence.

The Tenants agreed that they signed this mutual agreement with the Landlord on December 20, 2020, to end this tenancy as of March 31, 2021.

The Landlord testified that they are requesting an order of possession to enforce this agreement.

The Tenant testified that they had always intended to comply with the agreement to move out of the rental unit and feel that the Landlord's request for an order of possession is not necessary.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 44(1) of the *Act* provides the grounds in which a landlord and a tenant are permitted to end a tenancy.

#### **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:
  - (i) section 45 [*tenant's notice*];
  - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
  - (ii) section 46 [*landlord's notice: non-payment of rent*];
  - (iii) section 47 [*landlord's notice: cause*];
  - (iv) section 48 [*landlord's notice: end of employment*];
  - (v) section 49 [*landlord's notice: landlord's use of property*];
  - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
  - (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

I have reviewed the mutual agreement to end the tenancy, entered into documentary evidence by the Landlord, and I find that the Landlord and Tenants did agree in writing to end this tenancy.

Section 55(2) of the *Act* states that a landlord may request an order of possession when they have entered into a written agreement to end the tenancy with the tenant and the tenant has not disputed the agreement to end the tenancy.

***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:*

- (a) a notice to end the tenancy has been given by the tenant;*
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*
- (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;*
- (c.1) the tenancy agreement is a sublease agreement;*
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.*

Therefore, I find that the Landlord is entitled to an order of possession pursuant to section 55 of the *Act*. I grant the Landlord an **Order of Possession** effective not later than **1:00 p.m. on March 31, 2021**. The Tenants must be served with this Order. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. Although the Landlord has been successful in this application, I decline to award the recovery of the \$100.00 filing fee paid for this hearing, as there has been no breach of the *Act* by these Tenants that created the requirement for these proceedings.

Conclusion

I grant an **Order of Possession** to the Landlord effective not later than **1:00 p.m. on March 31, 2021**. The Tenants must be served with this Order. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the Landlord's application for the recovery of their application fee for this hearing.

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: March 24, 2021

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Residential Tenancy Branch