



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RR, LRE, OLC, OPM, FFL

### Introduction

This hearing was convened in response to an application by Tenant RM (the “Tenant”) and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on February 1, 2021 for:

1. An Order for a rent reduction - Section 65;
2. An Order restricting the Landlord’s entry - Section 70; and
3. An Order for the Landlord’s compliance - Section 62.

The Landlord applied on February 24, 2021 for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Landlord states that it did not know that the Tenant had made an application. The Tenant confirms that it did not serve its application for dispute to the Landlord. As the Tenant did not serve the Landlord with their application, I dismiss the Tenant’s application.

The Tenant states that they did not receive the Landlord’s application for dispute resolution. The Landlord states that their application for dispute resolution, notice of hearing and evidence (the “Hearing package”) was served on the Tenant by registered

mail on March 10, 2021. Postal evidence indicates that notices were left at the unit for collection of the registered mail and that it was not collected.

Section 89(2) of the Act provides that an application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (f) by any other means of service provided for in the regulations.

Section 90(a) of the Act provides that a document given or served by mail in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received on the 5th day after it is mailed. The Tenant gave no evidence of any impediment to collecting the mail. Given the postal evidence of notices being left, I find on a balance of probabilities that the Tenant did receive notice of registered mail. For this reason, I find that the Landlord did serve the Tenant as required under the Act and that the Tenant is deemed to have received the Hearing Package on March 15, 2021 despite not having collected the mail.

#### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy with the Tenant started June 1, 2019. The Parties then entered into another tenancy agreement to add Tenant MT. This tenancy under written agreement started on September 1, 2019. Rent of \$1,195.00 is payable on the first day of each month.

The Landlord states that on February 14, 2021 Tenant MT signed a mutual agreement to end the tenancy on February 14, 2021. The Landlord seeks an order of possession pursuant to this agreement.

The Tenant states that it knew nothing about the mutual agreement to end the tenancy and that the Landlords knew that Tenant MT moved out of the unit at the end of October 2019 as the Landlord had made Tenant MT leave the unit and took away only key to the unit from this Tenant at this time. The Tenant states that it felt the Landlord acted wrongly and as a result the Tenant withheld rents. The Tenant states that the Parties then went to a hearing that resulted in a mutual agreement for the repayment of rents and the Landlord was given an order of possession dated March 2020 but was only to serve this order if the Tenant did not pay as agreed. The Tenant states that despite meeting the terms of the repayment agreement the Landlord still served the order of possession on the Tenant a year after it was issued. The Tenant states that it obtained stays on this order of possession from the BC Supreme Court. The Tenant states that the Landlord continued to collect rent after Tenant MT moved out.

The Landlord states that the Tenant informed the Landlords in December 2020 that Tenant MT left and confirms that rent continued to be collected for the unit although the Landlord issued receipts for use and occupancy only for these rents. The Landlord states that they were not sure if the Tenant was being truthful and although they tried to contact Tenant MT to confirm they were unable to locate this Tenant. The Landlord confirms that Tenant MT has not been seen at the unit since December 2020. The

Landlord confirms that they attempted in February 2021 to enforce the order of possession dated March 2020. The Landlord states that they found Tenant MT, confirmed that this Tenant no longer resided in the unit and Tenant MT signed the mutual agreement to end the tenancy dated February 14, 2021. The Landlord states that it was also important to have Tenant MT sign the mutual agreement to end the tenancy to ensure that this Tenant would not be responsible for any damages left to the unit or for any other obligations under the tenancy agreement. The Landlord confirms that it did not make any application to remove the stay of proceedings. The Landlord states that the latest hearing on the matter was on March 12, 2021 and that they did not receive any decision from the BC Supreme Court.

### Analysis

Section 58(2)(c) of the Act provides that the director must resolve a dispute unless the dispute is linked substantially to a matter that is before the Supreme Court. Although it is unclear whether the proceedings at the BC Supreme Court have concluded, as the matter at the Court was in relation to an order of possession based on unpaid rent and as the current dispute is in relation to an order of possession based on a mutual agreement, I find that the current proceedings are not substantially linked to the matter at the BC Supreme Court.

Section 44(1)(c) of the Act provides that a tenancy ends if the landlord and tenant agree in writing to end the tenancy. Although the Tenant gives evidence that the Landlord knew that Tenant MT moved out of the unit, the Tenant provided no supporting evidence that the Landlord was informed of Tenant MT moving out of the unit prior to December 2020. I therefore find on a balance of probabilities that the Landlord only found out about Tenant MT's departure in December 2020. The Landlord gave undisputed evidence that Tenant MT's subsequent location was not known for some time. It is undisputed that the Landlord was not given any opportunity to remove Tenant MT from the tenancy agreement and to determine whether to continue with the Tenant alone. Whether or not the Landlord would have chosen to continue the tenancy

with the current Tenant, as Tenant MT remained on the tenancy agreement, I find that Tenant MT had full authority to end the tenancy for both Tenants. Given the mutual agreement signed by Tenant MT I find that the tenancy ended on February 16, 2021 and that the Landlord is entitled to an order of possession. As the Landlord's claim has been successful, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee and I order the Landlord to deduct this amount from the security deposit plus zero interest of \$600.00 in full satisfaction of the claim.

### Conclusion

The Tenant's application is dismissed.

**I Grant** an Order of Possession to the Landlord effective two days after service on the Tenants. The Tenants must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I Order** the Landlord to retain \$100.00 from the security deposit plus interest of \$600.00 in full satisfaction of the claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 5, 2021

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Residential Tenancy Branch