



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPT FFT

### Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- An Order of Possession of the rental unit pursuant to section 54; and
- Authorization to recover the filing fee from the respondent pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The parties each had individuals assisting them.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the applicant entitled to an Order of Possession?

Is the applicant entitled to recover their filing fee from the respondent?

## Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. A periodic tenancy began in 1998 with the respondent as landlord and the applicant and their partner PK as tenants. Neither party submitted a copy of the signed tenancy agreement into evidence, but both agreed that the applicant was a tenant under the original agreement.

During the tenancy PK took sick and the applicant moved out of the rental unit to reside in an RV with their pets on or about January 20, 2021. PK's mother came to reside at the rental unit and care for PK. Neither the applicant nor PK ended the original tenancy and no new tenancy agreement was entered by the parties. On June 16, 2021 PK passed away. PK's mother signed a Mutual Agreement to End the Tenancy dated June 17, 2021 to end the tenancy on July 31, 2021.

## Analysis

In accordance with section 54 of the *Act* a tenant who has entered into a tenancy agreement may request an order of possession of the rental unit.

I accept the undisputed evidence of both parties that there was a tenancy agreement wherein the applicant was one of the tenants with their partner PK. As delineated in Residential Tenancy Policy Guideline 13:

There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement.

While no written tenancy agreement was submitted into evidence, based on the undisputed evidence of both parties, I accept that the applicant is a named party to the tenancy agreement and is a co-tenant as defined in the Policy Guideline.

Policy Guideline 13 further provides clarification on how a tenancy can be ended. In relevant parts the Guideline states:

A tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing

to end the tenancy. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants.

...

Sometimes a co-tenant may move out of the rental unit without giving the landlord a notice to end tenancy. If a co-tenant decides to remain in the rental unit and continue with the tenancy, they can do so as long as they uphold their responsibilities according to the agreement (such as paying the full amount of rent, etc.). The co-tenant on the tenancy agreement who moved out remains liable for the tenancy agreement until the tenancy ends, regardless of whether or not they reside in the unit.

In the present circumstances it is evident that no written notice to end the original periodic tenancy was issued by either the applicant or the co-tenant PK. Therefore, the original tenancy agreement remained in effect with the applicant retaining all of their rights and responsibilities under the agreement.

While the co-tenant PK's mother signed a Mutual Agreement to End the Tenancy on June 17, 2021, I find they had no authority or ability to end this tenancy. PK's mother is not a party to the tenancy agreement and I find insufficient evidence that they were provided any Letters of Administration or Probate allowing them to enter into an agreement on behalf of PK's estate.

I find the landlord's submissions regarding the condition of the rental unit or how mail was retrieved from the rental property to be irrelevant to the matter at hand. I find the landlord had no authority to unilaterally deny the applicant access to the rental unit or to remove them from the tenancy agreement in the absence of written notice from one of the co-tenants.

Based on the totality of the evidence I find that there is a valid tenancy agreement between the parties created in 1998 and that it was not ended in accordance with the *Act* by any party. I therefore find that the applicant remains a tenant under the original tenancy agreement and entitled to an Order of Possession of the rental unit.

As the applicant was successful, they may recover their filing fee from the landlord. As this tenancy is continuing the tenant may make a one-time deduction of \$100.00 from the next scheduled rent payment to satisfy this monetary award.

Conclusion

I grant an Order of Possession in the tenant's favour effective two (2) days after service on the landlord. Should the landlord fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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 22, 2021

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Residential Tenancy Branch