



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: OPM OPC MNDCL-S FFL

### Introduction

The landlords seek an order of possession and a monetary order pursuant to sections 55 and 67 of the *Residential Tenancy Act* ("Act"). In addition, they seek recovery of the cost of the application filing fee pursuant to section 72 of the Act.

Only one of the landlords attended the hearing on January 6, 2022 at 11:00 AM. Neither tenant attended the hearing. The landlord gave evidence that her husband served a copy of the Notice of Dispute Resolution Proceeding on the tenant's girlfriend on September 29, 2021. The girlfriend was busy playing with a dog and instructed the husband to put the Notice in the mailbox. Based on this undisputed evidence it is my finding that the tenants were served in compliance with section 89(2)(c) of the Act.

### Issues

1. Are the landlords entitled to an order of possession?
2. Are the landlords entitled to a monetary order?
3. Are the landlords entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on September 1, 2016 and monthly rent is \$1,875.00. The tenants paid a \$840.00 security deposit which the landlords currently hold in trust pending the outcome of this dispute. A written tenancy agreement was submitted into evidence.

The landlords sought an order of possession on both an undisputed One Month Notice to End Tenancy for Cause and on a Mutual Agreement to End a Tenancy. As only one order of possession is required in an application of this nature, I will only consider the Mutual Agreement to End a Tenancy (the "Mutual Agreement").

A copy of the Mutual Agreement was in evidence. The Mutual Agreement appeared to me to be correctly filled out, and both the signatures of one of the landlords and one of the tenants appears at the bottom of the document. The Mutual Agreement indicates that the tenants are to vacate the rental unit by noon on December 15, 2021. However, the landlord testified that the tenants did not vacate as of today's date of January 6, 2022.

Another claim made in the landlords' application was for a monetary order. The landlords originally sought compensation in the amount of \$200.00 to pay for a bylaw ticket that the municipality issued to them as a result of the tenants' actions. However, the landlord explained that the tenant paid this amount and that the claim for \$200.00 is not required.

(This aspect of the landlords' application will be recorded as being dismissed without leave to reapply.)

### Analysis

Section 55(2)(d) of the Act states that a landlord may request an order of possession of a rental unit when a landlord and tenant have agreed in writing that the tenancy is ended.

In this application, the undisputed evidence leads me to find that the landlords are entitled to an order of possession in order to put into effect the legal terms of the Mutual Agreement. Namely, that the tenants agreed in writing to vacate the rental unit.

Thus, pursuant to section 55(3) of the Act the landlords are granted an order possession. A copy of the order of possession is issued in conjunction with this decision, to the landlords. As briefly explained to the landlord in the hearing, the landlords must serve a copy of this order of possession on the tenants. The tenants must vacate the rental unit in accordance with the order.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlords succeeded in their application, I award them \$100.00 in compensation to cover the cost of the application filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlords may retain \$100.00 of the tenants' security deposit in satisfaction of the above-noted award.

The remainder of the security deposit must be handled in accordance with [section 38](#) of the Act. Should the landlords intend to retain the balance of the security deposit on the basis that the tenants failed to pay rent for January 2022, they must either obtain the tenants' written permission to keep the balance of the security deposit or they must file an application within 15 days of the tenants' vacating the rental unit.

### Conclusion

The landlords' application is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 6, 2022

---

Residential Tenancy Branch