



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1296925 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPM, MNDCL, FFL

### Introduction

On October 20, 2021, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Mutual Agreement to End Tenancy pursuant to Section 55 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 19, 2021, the Landlord amended the application seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

S.D. attended the hearing as counsel for the Landlord, and C.L. attended the hearing as an agent for the Landlord. The Tenant attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties, with the exception of S.D., provided a solemn affirmation.

S.D. advised that she served the Notice of Hearing package by registered mail to the Tenant on October 22, 2021, and the Tenant acknowledged receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was duly served with the Notice of Hearing package.

She then advised that the Landlord's Amendment and evidence package was served to the Tenant by registered mail on November 19, 2021 (the registered mail tracking number is noted on the first page of this Decision). She submitted that this was delivered and signed for by the Tenant on November 26, 2021. The Tenant stated that he was not sure if he received this package or not. Based on the evidence before me, I am satisfied that the Tenant was served the Landlord's Amendment and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Tenant advised that he served his evidence to the Landlord on February 22, 2022 by registered mail. However, S.D. stated that the Landlord has not received this evidence. Given that the Tenant's evidence was served late, which was not in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, and as the Landlord has not yet received this evidence, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on the Mutual Agreement to End Tenancy?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The parties could not agree when the tenancy started, but it was between September 1, 2018 and January 1, 2019. Rent was established at an amount of \$675.00 per month

and was due on the first day of each month. A security deposit of \$337.50 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence as it was not provided to the Landlord by the previous owner.

S.D. advised that the Landlord and the Tenant signed a Mutual Agreement to End Tenancy on June 23, 2021, with an effective end date of the tenancy for September 30, 2021 at 1:00 PM. A copy of this mutual agreement was entered into evidence. As the Tenant had not moved out by this date, the Landlord applied for an Order of Possession.

Furthermore, S.D. advised that the Landlord is seeking compensation in the amount of **\$675.00** because the Tenant did not pay rent for September 2021. As well, she submitted that the Landlord is also seeking compensation in the additional amount of **\$3,375.00** because the Tenant has not paid any monies for overholding up until the date of this hearing. Finally, C.L. advised that the Landlord is also seeking compensation in the amount of **\$1,250.00** because an agreement was made with the Tenant that this amount would be paid to him contingent on him moving out on September 30, 2021. He stated that the Tenant accepted this money but did not move out in accordance with their agreement.

The Tenant confirmed that he signed the Mutual Agreement to End Tenancy on June 23, 2021, with an effective end date of the tenancy for September 30, 2021 at 1:00 PM. However, he could not find a new place to move to, so he continued to overhold in the rental unit. He acknowledged that the tenancy was never re-instated at any point during his overholding.

Furthermore, the Tenant confirmed that he had not paid any rent for September 2021, nor has he paid any rent since. He also acknowledged that he received \$1,250.00 on the condition that he vacate the rental unit on September 30, 2021. He confirmed that he deposited this money despite not moving out as per the terms of the Mutual Agreement to End Tenancy.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

I note that Section 55 of the *Act* allows a Landlord to submit an Application for Dispute Resolution seeking an Order of Possession based on a Mutual Agreement to End Tenancy, and I must consider if the Landlord is entitled to that Order if the agreement is valid.

As well, Section 44 of the *Act* allows a tenancy to end by mutual consent of both the Landlord and the Tenant.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

In considering this matter, I have reviewed the Mutual Agreement to End Tenancy. I am satisfied that both the Landlord and Tenant signed and agreed to the terms stated in that agreement. Based on the undisputed evidence before me, I am satisfied that the Landlord and Tenant agreed to mutually end the tenancy on September 30, 2021 at 1:00 PM. As the Tenant failed to vacate the rental unit by this time, I find that the Landlord is entitled to an Order of Possession. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit in **two days**, the Landlord may enforce this Order in the Supreme Court of British Columbia.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?

- Did the Landlord act reasonably to minimize that damage or loss?

With respect to the Landlord's claim for compensation in the amount of \$4,050.00 for September 2021 rent, and additional monies owing up until the date of the hearing for overholding in the rental unit, based on the undisputed evidence before me, I grant the Landlord a monetary award in the amount of **\$4,050.00** to satisfy these claims.

Regarding the Landlord's claim for compensation in the amount of \$1,250.00 given to the Tenant contingent on him moving out on September 30, 2021, as the Tenant confirmed that the condition of this payment was conditional on him giving up vacant possession of the rental unit on September 30, 2021, I am satisfied that the Tenant breached this agreement. As such, I grant the Landlord a monetary award in the amount of **\$1,250.00** to satisfy this debt.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenants to the Landlord**

Item	Amount
September 2021 rent	\$675.00
October 2021 overholding	\$675.00
November 2021 overholding	\$675.00
December 2021 overholding	\$675.00
January 2022 overholding	\$675.00
February 2022 overholding	\$675.00
Move-out incentive	\$1,250.00
Recovery of Filing Fee	\$100.00
Security deposit	-\$337.50
<b>Total Monetary Award</b>	<b>\$5,062.50</b>

Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective **two days** after service of this Order on the Tenant. Should the Tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I provide the Landlord with a Monetary Order in the amount of **\$5,062.50** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 28, 2022

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Residential Tenancy Branch