



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1286825 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPM

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession based on a mutual agreement to end tenancy, pursuant to section 55.

The landlord's agent, the landlord's lawyer, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 53 minutes.

The hearing began at 9:30 a.m. with me, the landlord's agent, and the tenant present. The landlord's lawyer called into the hearing late at 9:34 a.m. The landlord's lawyer left the hearing from 9:43 a.m. to 9:45 a.m., claiming that he had a technical difficulty. The hearing ended at approximately 10:23 a.m.

All hearing participants confirmed their names and spelling. The landlord's agent provided his email address, and the tenant provided his mailing address for me to send this decision to both parties after the hearing.

The landlord's agent stated that he is the director and owner of the landlord company ("landlord") named in this application and that he had permission to speak on its behalf. He said that the landlord owns the rental unit and provided the address. He confirmed that the landlord's lawyer had permission to speak on behalf of him and the landlord at this hearing.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure*. All hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Both parties affirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle this application. Neither party made any adjournment or accommodation requests.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The tenant confirmed that he did not submit any documentary or digital evidence for this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the tenant's name, which was listed with his surname first and his first name last, as per his driver's license. Both parties consented to this amendment during this hearing. I find no prejudice to either party in making this amendment.

#### Preliminary Issue – Inappropriate Behaviour by the Tenant during this Hearing

Rule 6.10 of the RTB *Rules* states the following:

*6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*  
*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

Throughout this hearing, the tenant repeatedly interrupted and argued with me and the landlord's agent. I informed the tenant that I was required to mute his telephone line a few times during this hearing, because he would not allow me or the landlord's agent to speak without interruption.

I repeatedly cautioned the tenant, but he continued with his inappropriate behaviour. This hearing lasted longer because of the tenant's repeated interruptions, arguments, and inappropriate behaviour.

However, I allowed the tenant to attend the full hearing, despite his inappropriate behaviour, in order to allow him to present his application and respond to the landlord's submissions.

### Issue to be Decided

Is the landlord entitled to an Order of Possession based on a mutual agreement to end tenancy?

### Background and Evidence

The landlord's agent stated the following facts. The landlord purchased the rental unit in May 2021 and took over this tenancy. No tenancy agreement was signed with the tenant. The tenant has not paid any rent to the landlord since the landlord assumed this tenancy in May 2021. The tenant did not pay a security or pet damage deposit to the landlord. The former owner has the tenant's security deposit.

The tenant stated the following facts. He moved into the rental unit 12 years ago. He continues to reside there. He signed a written tenancy agreement with the former landlord, not the current landlord. He paid a security deposit of \$500.00 to the former landlord, which should have transferred over to the current landlord. He tried to pay rent of \$1,600.00 to the landlord but it was refused, so the landlord has not collected any rent from the tenant during this tenancy.

The landlord's agent and the tenant both agreed that they signed a mutual agreement to end tenancy for the tenant to vacate the rental unit by 10:00 a.m. on September 30, 2021 ("mutual agreement").

The landlord's agent stated that the landlord seeks an immediate order of possession based on the mutual agreement. The tenant claimed that he disputes the landlord's application.

The tenant stated that he did not read the whole mutual agreement. He said that he read the date on the mutual agreement and planned to move out. He claimed that he got a new job and was waiting for his paycheck. The tenant explained that he wanted

the return of his security deposit from the landlord first, in order to pay for a new unit to rent.

### Analysis

Section 44(1)(c) of the *Act* states the following with respect to ending a tenancy:

*44 (1) A tenancy ends only if one or more of the following applies:  
(c) the landlord and tenant agree in writing to end the tenancy.*

Both parties agreed that the landlord's agent and tenant signed a mutual agreement to end this tenancy at 10:00 a.m. on September 30, 2021. A copy of the mutual agreement was provided for this hearing. It is on an approved RTB form. It is signed by both parties, the landlord's agent, as the authorized representative of the landlord owner, and the tenant. It states that the tenancy is ending at 10:00 a.m. on September 30, 2021. The tenant was required to vacate by the above date and time but failed to do so.

I find that the tenant voluntarily signed the mutual agreement, and it is valid and effective. Whether he read it or not, is up to the tenant. The landlord is not obligated to explain the form to the tenant or to advise him about it. I find that the tenant was not forced or pressured to sign the mutual agreement and he was not under duress. The tenant could have called the RTB, using the contact information provided on the mutual agreement, to ask questions or to determine his rights and responsibilities, as specifically stated on the form itself. However, if the tenant chose to sign the form without discussing it with the RTB, an agent, a lawyer, or anyone else, that is his choice.

The tenant agreed that he read the date to move out on the mutual agreement and he intended to move out. I find that the tenant was aware that the landlord wanted him to move out of the rental unit. Both parties agreed that the landlord did not collect any rent from the tenant before or after the effective date on the mutual agreement of September 30, 2021.

At the top of the form, the parties' mutual agreement clearly states that it is an agreement by both parties to end the tenancy. It specifically states that neither party is under any obligation to sign the form and that if any party has questions, to contact the RTB, before signing the form. The contact information for the RTB is on the bottom of the form. It states that the agreement is in accordance with the *Act*, which says that both the landlord and tenant agree in writing to end the tenancy.

The parties' mutual agreement states the following at the top of the form in large black font (my emphasis added):

*Mutual Agreement to End a Tenancy*  
*#RTB-8*

*NOTE: This form is NOT a Notice to End Tenancy. **Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s).** If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. **If you have questions about tenant or landlord rights and responsibilities** under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act, **contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.***

The mutual agreement states the following at the bottom of the form under the landlord's and tenant's signature lines (my emphasis added):

***The parties recognize that the tenancy agreement between them will legally terminate and come to and end at the date and time stated above. It is also understood and agreed that this agreement is in accordance with the Residential Tenancy Act and the Manufactured Home Park Tenancy Act which states: "The landlord and tenant agree in writing to end the tenancy."***

***FOR MORE INFORMATION:***

***[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)***

***Phone: 1-800-665-8779 (toll-free) Greater Vancouver: 604-660-1020 Victoria: 250-387-1602***

On a balance of probabilities and for the reasons stated above, the landlord's application is granted. I find that the landlord is entitled to an order of possession against the tenant, effective two (2) days after service on the tenant, pursuant to section 55 of the Act. I find that the tenant did not vacate the rental unit as required by the mutual agreement.

The September 30, 2021 effective date in the mutual agreement has long passed, as this hearing occurred on March 7, 2022, over five months later. Accordingly, I find that

the landlord is entitled to an immediate order of possession, which the landlord's agent requested during this hearing.

Conclusion

The landlord's application is granted.

I grant an Order of Possession to the landlord effective **two (2) days** after service on the tenant. Should the tenant or anyone 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.

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 09, 2022

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Residential Tenancy Branch