



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **OPM OPB MNRL MNDCL FFL**

### Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a mutual agreement to end tenancy pursuant to section 55(2)(d); and
- an Order of Possession for breach of a vacate clause that states the Tenant will vacate the rental unit at the end of the fixed term pursuant to section 55(2)(c).

The Tenant did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 10:04 am, in order to enable the Tenant to call into this teleconference hearing. One of the two Landlords ("MS") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that MS and I were the only ones who had called into this teleconference.

MS testified the Landlords served the NDRP and some of their evidence ("NDRP Package") on the Tenant by registered mail on April 1, 2022. MS provided the Canada Post receipt and tracking number for service of the NDRP Package to corroborate his testimony. Based on the undisputed evidence of MS, I find that the NDRP Package was served on the Tenant in accordance with sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find the Tenant was deemed to have received the NDRP Package on April 6, 2020.

MS stated the Landlords served additional evidence on the Tenant's door on April 26, May 1 and June 6, 2022. Based on the undisputed testimony of MS, I find the Landlords' additional evidence was served on the Tenant in accordance with the provisions of section 88 of the Act. Pursuant to section 90 of the Act, I find the Tenant was deemed to have been served with the Landlords' additional evidence on May 1, May 4 and June 9 respectively.

MS stated the Tenant did not serve any evidence on the Landlords for the hearing.

Preliminary Matter – Service of Landlords' Amendment on Tenant

MS stated the Landlords filed with the Residential Tenancy Branch an amendment dated May 16, 2022 ("Amendment") to the Application. In the Amendment the Landlords made monetary claims ("Monetary Claims") as follows:

- a monetary order for \$4,350.00 to recover unpaid rent from the Tenant pursuant to section 67 of the Act; and
- compensation of \$2,200.00 for monetary loss or other money owed by the Tenant pursuant to section 67 of the Act.

MS stated he served the Amendment on the Tenant's door on May 16, 2022. Section 89 of the Act states:

- 89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
  - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
  - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
  - (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.
- (2) 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.
- (3) A notice under section 87.5 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

An amendment to an application for dispute resolution is a document that must be served by the applicant pursuant to either section 88(1) or 88(2) of the Act. Where an amendment only seeks an order of possession pursuant to sections 55, 56 or 56.1 of the Act, the amendment may be served pursuant to the provisions of section 88(2) of the Act. One of the methods of service allowed by section 88(1) is by serving the amendment on the tenant's door. However, where the amendment includes a monetary claim, the amendment must be served pursuant to the provisions of section 88(1) of the Act. Section 88(1) of the Act does not permit service of an amendment on the tenant's door. As the Landlords did not serve the Amendment in accordance with the provisions of section 88(2) rather section 88(1), the Amendment was not effective to give the Tenant notice of the Monetary Claims the Landlords were making against him in the Amendment. As such, I dismiss the Landlords' Monetary Claims with leave to reapply.

### Issues to be Decided

Are the Landlords entitled to:

- an Order of Possession based on a Mutual Agreement to end tenancy?
- an Order of Possession for breach of a vacate clause that states the Tenant will vacate the rental unit at the end of the fixed term

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

MS submitted into evidence a signed copy of the tenancy agreement, dated October 27, 2022, between the Landlords and the Tenant. MS stated the tenancy commenced on November 1, 2021, with a fixed term ending April 30, 2022, with rent of \$1,450.00 payable on the 1<sup>st</sup> day of each month. MS stated the Tenant paid a security deposit of \$725.00 and the Landlords are holding in trust on behalf of the Tenant. MS stated that paragraph 2(e) of the tenancy agreement required the Tenant vacate the rental unit at the end of the fixed term on the basis that the rental unit would be used by his parents. MS stated the Tenant did not vacate the rental unit on April 30, 2020 as required by the terms of the tenancy agreement.

MS submitted into evidence copies of two airlines tickets showing the parents travelled to Vancouver, BC, on June 7, 2022. MS stated that his parents have been staying in a hotel waiting for the Tenant to vacate the rental unit resulting in them incurring unnecessary costs for accommodations.

MS submitted into evidence a copy of a mutual agreement stating the Tenant would vacate the rental unit on July 31, 2022 ("Mutual Agreement").

MS stated it appeared the Tenant vacated the rental unit on or about June 3, 2022 but did not return the key to the rental unit to the Landlords. MS stated the Landlords posted a notice on the Tenant's door on June 3, 2022 requesting access to the rental unit on June 8, 2022. MS stated the Landlords entered the rental unit and found the Tenant had removed all of his personal possessions.

### Analysis

Paragraph 2(e) of the tenancy agreement between the Landlords and Tenant states the Tenant must vacate the rental unit by April 30, 2022 on the basis that his parents would be using the rental unit. MS stated the Tenant did not vacate the rental unit on April 30, 2022.

Subsection 44(1)(b) and 44(1)(d) of the Act states:

- 44(1) A tenancy ends only if one or more of the following applies:
- [...]
  - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
  - [...]
  - (d) the tenant vacates or abandons the rental unit;
  - [...]

The circumstances prescribed under section 97(2)(a.1) are set out in section 13.1 of the *Residential Tenancy Regulation* which states:

- 13.1(1) In this section, "close family member" has the same meaning as in section 49 (1) of the Act.
- (2) For the purposes of section 97 (2) (a.1) of the Act *[prescribing circumstances when landlord may include term requiring tenant to vacate]*, the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that
- (a) the landlord is an individual, and
  - (b) that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

I have examined the Mutual Agreement and it appears that it was not signed by the Tenant. As such, I find the Mutual Agreement was ineffective.

Based on the undisputed testimony of MS, I find the Tenant breached the terms of the tenancy agreement by failing to vacate the rental unit by April 30, 2022. Based on the undisputed testimony of MS, I find his parents have arrived in Vancouver and are waiting to move into the rental unit when it has been vacated by the Tenant. I have reviewed the tenancy agreement and find the vacate clause of the tenancy agreement complies with the provisions of section 13.1(b).

Although it appears the Tenant has removed all of his personal possessions and abandoned the rental unit, the Landlords are concerned the Tenant may return as he has not returned the key to the rental unit. Based on the foregoing, pursuant to section 55(2)(c) of the Act, I grant the Landlords an Order of Possession of the rental unit. Pursuant to section 68(2)(a) of the Act, I find the tenancy ended on June 8, 2022, being the date the Landlords entered the rental unit and found the Tenant had removed all of his personal possessions.

As the Landlords have been successful in their claim, they may recover the \$100.00 filing fee for the Application from the Tenant pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, the Landlords may deduct the \$100.00 filing fee of the Application from the Tenant's deposit of \$725.00. The balance of the security deposit of \$625.00 is to be administered by the Landlords in accordance with the provisions of the Act.

### Conclusion

I order the Tenant deliver vacant possession of the rental unit to the Landlords within two days of being served with a copy of this decision and the attached Order of Possession by the Landlords. 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.

The Landlords are awarded the filing fee for the Application and they may deduct this amount from the Tenant's deposit of \$430.00.

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 20, 2022

---

Residential Tenancy Branch