



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPM, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on July 4, 2022 seeking an order of possession of the rental unit. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 22, 2022. In the conference call hearing, I explained the process and provided the participants the opportunity to ask questions.

### Preliminary Matter – Landlord service of Application and evidence

At the start of the hearing the Landlord set out how they provided the Notice of Dispute Resolution Proceeding (the “Notice”) to the Tenant after the Residential Tenancy Branch sent that document to the Landlord on July 18, 2022. This was via registered mail to the Tenant’s address which is the rental unit they currently occupy.

The Landlord provided a copy of the tracking history for the registered mail item for service of the Notice. They sent the registered mail on July 21, 2022. By July 27, the item was returned to the Landlord, showing the record “Item refused by recipient” on that date. The Landlord included an image of the envelope showing the tracking information number, and the word “Refused” written on the envelope.

In the hearing, the Tenant stated they did not receive the original notice of registered mail. They contacted the Residential Tenancy Branch, advising of the non-delivery. By the time the Tenant inquired to the Landlord directly about registered mail, the package was already on its way back to the Landlord as the original sender.

I find there is a distinction between refusing a registered mail item and not being notified of its existence. I find it more likely than not that the Tenant was made aware of the registered mail and refused to accept it after a final notice was given to them on July 27. This is not a situation where the Tenant was advised of registered mail waiting for them at a post office, with a follow-up reminder from the post office about unclaimed mail. I find the record shows clearly that the recipient of the registered mail (*i.e.*, the Tenant) refused to accept the item. This means either a refusal stated to the delivery worker who delivered the item directly, or an inquiry at the post office – with notification in hand – led to the Tenant’s direct refusal to accept the registered mail item.

For the purposes of service of the Notice, I find the Landlord completed what was required in this instance. This was via registered mail, and I deem service to the Tenant completed on July 26. That is the fifth day after the Landlord mailed it, by s. 90(a) of the *Act*. I find this included the evidence the Landlord presented and relied on for this hearing, and I give the Landlord’s evidence full consideration herein.

#### Preliminary Matter – Tenant’s service of response evidence

Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* sets out the timeline for a respondent to provide their evidence both to an applicant and the Residential Tenancy Branch:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible.

Also:

... the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

In the hearing, the Tenant stated they sent their evidence on November 14. They checked the assigned tracking number for the piece of registered mail, and this revealed the Landlord received that registered mail two days later, on November 16.

November 16 was 6 days before the hearing. The Tenant provided their evidence to the Residential Tenancy Branch on November 12, 2022.

I find the Tenant refused to accept the Landlord’s original Notice and evidence in this matter. I find this more likely than not explains why they did not serve their evidence to

the Landlord in a timely manner. I exclude the Tenant's evidence from consideration, as set out in Rule 3.17.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession in line with a Mutual Agreement to End Tenancy, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The Landlord applied for an order of possession pursuant to the Mutual Agreement to End a Tenancy they signed jointly with the Tenant. They presented this document in their evidence showing the end-of-tenancy date as July 31, 2022.

In the hearing the Landlord reviewed the background. I here reproduce the relevant points regarding the Mutual Agreement to End a Tenancy document.

The Landlord notified the Tenant about their pending sale of the rental unit on January 2, 2022 via email. In the Landlord's mind this was an abundance of advance notice to allow for minor renovations. The Landlord delayed the sale to July 31 because of the Tenant's inquiry and their statement that they enjoyed this living arrangement.

The Landlord forwarded the Mutual Agreement to End a Tenancy document to the Tenant on January 4, 2022 via email, stating: "If you both can sign it electronically or I can print it for you to sign on feb 1 when I come to collect the rent." The Tenant responded to say "Can you bring a printed copy in February as unable to sign electronically."

On January 29 the Tenant returned a signed Mutual Agreement to End a Tenancy document to the Landlord. At that time, the Landlord started to schedule renovations and other work in line with the sale. In the Landlord's evidence is a message dated January 29, 2022 from the Tenant, attaching the signed Mutual Agreement, stating: "Here is a copy with names on it. I don't require paper copy, as this new variant stays on paper for days so please don't bring one."

By July 1, the Tenant stated to the Landlord they were no longer moving out. This appears in the Landlord's evidence as a text message wherein the Tenant provided a cheque for July, the Landlord informed them that the final month was rent-free, then the Tenant responded to say a new owner would be serving a notice to end tenancy if that were the case, then insisting that the rent for July must be paid. The Landlord responded: "... you signed the mutual agreement to move out end of July." By July 4, the Landlord applied for the order of possession

In the hearing, the Tenant stated that they did not sign the Mutual Agreement document. They had asked for a delay of the sale of the rental unit until summer 2022. The Tenant requested a paper copy of the Mutual Agreement even though they would not sign it. Their simple inquiry in the hearing was: 'why would I sign such an agreement when I was begging the Landlord not to sell the rental unit'?

The Tenant also added that they always sign their full legal name when signing something, not as shown in the Landlord's evidence with what appears to be an abbreviated name. Responding to this, the Landlord pointed to other earlier tenancy agreements wherein the Tenant used an abbreviated name.

The Tenant also pointed to the Landlord's credibility in two ways. One was the Landlord stating that they had not ever increased the rent during this tenancy, as the Landlord presented when they explained the background in this tenancy. Additionally, the Tenant described some circumstances regarding an insurance claim, in which they allege the Landlord fabricated some material provided to the insurer.

### Analysis

By s. 55 of the *Act*, a landlord may request an order of possession of a rental unit when the landlord and tenant have agreed in writing that the tenancy is ended. An arbitrator may grant an order of possession after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Here, I find it more likely than not that the Tenant signed the Mutual Agreement to End a Tenancy as it appears in the Landlord's evidence. They did so electronically and returned the signed document to the Landlord on January 29, 2022. I make this finding based on a balance of probabilities. The Landlord presented the evidence for this: it is

the single email message from the Tenant dated January 29, 2022, wherein the Tenant stated: "Here is a copy with names on it."

The Tenant presented that their signatures are not true on that document. While they presented other evidence that bears their proper full-name signature, that evidence is not in the record because of disclosure, set out above. I find it more likely than not that the document was signed electronically on some screen; therefore, the signature appears quite basic and without the usual flourishes a pen-signature might bear.

I find it more likely than not that the Tenant signed this document and sent it back to the Landlord via email. Though not stated outright, the Tenant's position is that this document was fraudulently created by the Landlord; however, there is no sound evidence for this, and nothing to outweigh the single email in the Landlord's evidence from the Tenant with this document attached.

The Tenant otherwise pointed to the Landlord's credibility. This centred on a matter of rent increase over the course of the tenancy, and the Landlord's handling of some insurance matter. As above, I find the recall of these events – as stated by the Tenant in the hearing – does not outweigh or otherwise detract from the Landlord's account of their negotiated approach to the sale of the unit with the Tenant, and the email evidence in the record.

I find the Landlord and Tenant completed a Mutual Agreement to End a Tenancy on January 29, 2022 as shown in the record. The date for the Tenant to vacate was July 31, 2022. Based on this document that bears both parties' signature as proof of the fact that the tenancy has ended on mutual agreement, I grant an Order of Possession, as per s. 55 of the *Act*, to the Landlord.

As the Landlord was successful in this Application, I find the Landlord is entitled to recover the \$100 Application filing fee.

Conclusion

I grant an Order of Possession to the Landlord effective two days after service of this Order of Possession on the Tenant. Should the Tenant fail to comply with this Order of Possession, the Landlord may file this Order of Possession with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

I order the Landlord to retain \$100 from the Tenant's security deposit of \$1,300 in full satisfaction of the monetary award for the filing fee. The remainder of the Tenant's security deposit will be dealt with at the end of this tenancy in accordance with s. 38 of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: December 12, 2022

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Residential Tenancy Branch