



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIVE STAR HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL, OPM

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act*, (the “Act”) to enforce a One Month Notice to End Tenancy for Cause, (the “Notice”) dated July 8, 2022, and to recover the filing fee for this application. The matter was set for a conference call.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters – Application Amended

At the outset of these proceedings, the Landlord testified that they no longer wished to enforce their notice to end the tenancy as they had entered into a signed mutual agreement to end the tenancy with the Tenant.

The Landlord testified that they wish to amend their application to request an order of possession to enforce the mutual agreement to end the tenancy.

The Tenant agreed that they had signed a mutual agreement to end their tenancy with the Landlord but that they did not feel an order of possession was necessary to enforce that agreement.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure states the following:

**4.2 Amending an application at the hearing**

“In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.”

As the mutual agreement to end tenancy was signed on January 1, 2023, only 4 business days before these proceedings, I find the Landlord's request to amend their application during these proceedings to be reasonable. I will proceed with this hearing on the Landlord's request for an order of possession to enforce a mutual agreement to end this tenancy.

Issue to be Decided

- Is the Landlord entitled to an order of possession pursuant to sections 44 and 55 of the *Act*?

Background and Evidence

The tenancy agreement records that the tenancy began on November 1, 2010, as a one-year fixed term that continued as a month-to-month tenancy at the end of the first year. Rent in the amount of \$886.00 is to be paid by the first day of each month and Tenant paid the Landlord a \$340.00 security deposit at the outset of this tenancy.

During the hearing, both parties agreed that they had signed a mutual agreement to end tenancy on January 1, 2023, the Landlord submitted a copy of the mutual agreement to end tenancy into documentary evidence.

The Tenant testified that they did sign the mutual agreement to end their tenancy in exchange for two month's rent as compensation.

The Landlord agreed that the mutual agreement included compensation to the Tenant in the form of two months free rent, at the monthly rental amount of \$886.00.

### Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 44 of the Act stated the following:

***44 (1) A tenancy ends only if one or more of the following applies:***

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:*
  - (i) section 45 [tenant's notice];*
  - (i.1) section 45.1 [tenant's notice: family violence or long-term care];*
  - (ii) section 46 [landlord's notice: non-payment of rent];*
  - (iii) section 47 [landlord's notice: cause];*
  - (iv) section 48 [landlord's notice: end of employment];*
  - (v) section 49 [landlord's notice: landlord's use of property];*
  - (vi) section 49.1 [landlord's notice: tenant ceases to qualify];*
  - (vii) section 50 [tenant may end tenancy early];*
- (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;*
- (c) the landlord and tenant agree in writing to end the tenancy;*
- (d) the tenant vacates or abandons the rental unit;*
- (e) the tenancy agreement is frustrated;*
- (f) the director orders that the tenancy is ended;*
- (g) the tenancy agreement is a sublease agreement.*

Pursuit to section 44(c) a landlord and tenant may agree, in writing, to end a tenancy. In this case, I have reviewed the party's testimony and the mutual agreement entered into documentary evidence and find that on January 1, 2023, these parties have entered into a mutual agreement to end this tenancy as of May 1, 2023. This agreement also includes two months free rent in compensation to the Tenant.

Section 55(2d) of the Act states that a landlord may request an order of possession if a written mutual agreement to end tenancy has been signed by both the landlord and the tenant.

***Order of possession for the landlord***

*55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

*(d) the landlord and tenant have agreed in writing that the tenancy is ended.*

The Landlord is therefore entitled to an Order of Possession pursuant to section 55(2d) of the *Act*. I grant the Landlord an Order of Possession effective not later than 1:00 p.m. on May 1, 2023. Should the Tenant fail to comply with this Order, this order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

I grant an **Order of Possession** to the Landlord effective not later than 1:00 p.m. on May 1, 2023. The Landlord is provided with this Order 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: January 10, 2023

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Residential Tenancy Branch