



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **OPT, FFT**

### **Introduction**

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

1. An Order of Possession for the Tenant under Sections 54 and 62 of the Act; and,
2. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Tenant's agent and interpreter attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant's agent, interpreter, and I were the only ones who had called into this teleconference. The Tenant's agent was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant's agent and interpreter that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant's agent and interpreter testified that they were not recording this dispute resolution hearing.

The Tenant's agent testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on April 20, 2023 by Canada Post registered mail (NoDRP package). The Tenant's agent referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision.

The Tenant's agent also attached the NoDRP package to the Landlord's door on April 20, 2023. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on April 25, 2023, in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Issues to be Decided

1. Is the Tenant entitled to an Order of Possession?
2. Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant's agent confirmed that this tenancy began as a fixed term tenancy on August 26, 2017. The fixed term will end on August 26, 2035, then the tenancy can continue on a month-to-month basis. Monthly rent is \$1.00 payable on the first day of each month. A security deposit of \$1.00 was collected at the start of the tenancy and is still held by the Landlord.

Around the end of March 2023, the Tenant had paid all the outstanding mortgage payments, and property taxes for the residential property. When the Tenant returned to the rental unit, the Landlord had changed the locks and did not provide a new key to the Tenant.

The Tenant's agent submits that the Tenant has a valid tenancy agreement, and she wants to continue residing in the rental unit. At present, the Tenant and her child are homeless and sleeping on a friend's couch. All the Tenant's personal belongings remain in the rental unit. The Landlord does not have any legal right to take possession of the rental unit.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.***

The Tenant's tenancy agreement is for a long period, but is less than 20 years, so the Act applies in this matter.

The Tenant uploaded a valid tenancy agreement. The Landlord did not attend this hearing to provide evidence in the contrary.

The Tenant's agent described that when the Tenant returned home from completing some business transactions, the Landlord had changed the locks on the rental unit and the Tenant was locked out of the rental unit. The Tenant's agent testified that the Landlord does not have any legal right to take possession of the residential property.

I find based on the undisputed testimony of the Tenant's agent, that the Tenant has a valid tenancy agreement and is entitled to an Order of Possession for the residential property two days after service of the Order of Possession on the Landlord.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. I grant the Tenant a Monetary Order for \$100.00 to reimburse her the payment of the application filing fee.

### Conclusion

I grant an Order of Possession to the Tenant effective on May 26, 2023. The Tenant must serve this Order on the Landlord as soon as possible. Should the Landlord fail to

comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant a Monetary Order to the Tenant in the amount of \$100.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: May 24, 2023

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Residential Tenancy Branch