



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF, O

### Introduction

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

- authorization to recover his filing fee for this application from the tenant pursuant to section 72 of the *Act*, and
- for other reasons, specified in the details of the tenancy as an Order of Possession to be used in case the tenants do not end their tenancy in accordance with their signed written agreement by December 15, 2011, pursuant to section 55(2)(d) of the *Act*.

The tenants did not attend this hearing, although I waited until 1:51 p.m. in order to enable them to connect with this 1:30 p.m. hearing. The male landlord (the landlord) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he posted a copy of the dispute resolution hearing package on the tenants' door on December 9, 2011 when the tenants refused to answer their door to take it from him personally. The landlord's witness testified that he witnessed the landlord post a copy of the dispute resolution hearing package on the tenants' door at or about noon on December 9, 2011. In accordance with sections 89(2)(d) and 90(c) of the *Act*, I am satisfied that the tenants were deemed served with the landlord's application for dispute resolution on December 12, 2011, three days after posting the dispute resolution hearing package on the tenants' door.

At the hearing, I amended the dispute address for this tenancy to remove a portion of the alternate address on 123A Ave., which the landlord had included in his original application for dispute resolution. The correct dispute address is as outlined above.

Although the landlords' application for dispute resolution was not as explicit as would have been ideal, I am satisfied that the information contained in the landlords' dispute resolution hearing package, including the application for dispute resolution, gave the tenants sufficient notification that the landlords were seeking an end to this tenancy and an Order of Possession. This Order of Possession was to be used if the tenants did not abide by the terms of their signed November 15, 2011 written agreement to end this tenancy by December 15, 2011.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This periodic tenancy began on July 1, 2011. Monthly rent is set at \$650.00, payable in advance on the first of each month. The landlord testified that he continues to hold the tenants' \$200.00 security deposit paid on or about July 1, 2011. The landlord said that the tenants have not paid the remaining \$100.00 of their required security deposit.

The landlord testified that there have been a number of problems with this tenancy. He said that the tenants were late in paying all of their November 2011 rent. He said that the landlords subsequently received the outstanding \$200.00 in rent owing from November 2011 and \$325.00 for the first half of the rent owing from December 2011. The landlord entered into written evidence a copy of a November 15, 2011 agreement signed by the male tenant on behalf of the tenants and one of the landlords on behalf of the landlords. In this agreement, the tenants agreed to end their tenancy by December 15, 2011. The tenants agreed that "the landlord can advertise and rent his basement suite from December 15<sup>th</sup> 2011 onwards."

The landlord said that he provided the tenants with many boxes so that they could pack their belongings and vacate the rental unit in compliance with their November 15, 2011 agreement. The landlord testified that he understands that the male tenant has left the rental unit, although many of the male tenant's possessions may remain there. The landlord testified that he believes that the female tenant is still living in the rental unit, although he is not certain as no one is answering the tenants' door. He said that the purpose of his application for dispute resolution was to obtain an end to this tenancy by December 15, 2011 and to obtain an Order of Possession in case both tenants did not vacate the rental unit by that date.

Analysis

Section 44(1)(d) of the *Act* allows parties to enter into a written agreement to end a tenancy at a mutually set time and date. Section 55(2)(d) of the *Act* permits a landlord to obtain an Order of Possession by making an application for dispute resolution when "the landlord and tenant have agreed in writing that the tenancy is ended." Based on the undisputed oral and written evidence provided by the landlord, I am satisfied that there is a signed written agreement between the parties which calls for this tenancy to end by December 15, 2011. In accordance with section 55(2)(d) of the *Act*, I allow the landlords' application to obtain an Order of Possession to be used if the tenants do not vacate the rental unit in compliance with the signed written agreement to do so by

December 15, 2011. I provide the landlords with a formal copy of an Order of Possession to take effect within 2 days of the landlords' service of this notice to the tenant(s).

Under the circumstances and as it is unclear at this stage as to whether the landlords' application for dispute resolution to obtain an Order of Possession was truly necessary, I dismiss the landlords' application to recover their filing fee without leave to reapply.

#### Conclusion

I find that this tenancy ends on December 15, 2011. I provide the landlords with a formal copy of an Order of Possession to take effect within 2 days of the landlords' service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlords' application for recovery of their filing fee without leave to reapply.

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: December 14, 2011

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Residential Tenancy Branch