



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, OPC (Landlord's Application)  
                                 CNR, OLC, MNDC, FF (Tenants' Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenants and the Landlord. Both parties also amended their Application prior to the hearing.

The Landlord applied for an Order of Possession on the basis that the Tenants have breached an agreement with the Landlord and for a notice to end tenancy for cause. The Tenants applied for the following reasons: to cancel a notice to end tenancy for unpaid rent and cause; for the Landlord to comply with *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation, or tenancy agreement; and, to recover the filing fee.

The Landlord and one of the Tenants appeared for the hearing and provided affirmed testimony as well as documentary and digital evidence prior to the hearing. The parties confirmed receipt of each other's: Application; amended Application; and documentary and digital evidence which were served prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present evidence, make submissions to me, and cross examine the other party on the evidence provided. At the conclusion of the hearing, the Tenant withdrew the monetary claim for the reasons detailed below.

### Issue(s) to be Decided

- Is the Tenancy due to end on January 31, 2016?
- If so, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to cancel the notices to end tenancy?

### Background and Evidence

The parties agreed that on May 21, 2015 they signed a residential tenancy agreement for the rental of the basement suite. The tenancy started on June 1, 2015 and the agreement shows that it was for a fixed term of one year due to expire on May 31, 2016.

However, on July 27, 2015, the parties signed an amendment to the tenancy agreement agreeing that the tenancy which was entered into on May 21, 2015 was to be a fixed term and end instead on October 31, 2015. The parties then amended the tenancy agreement again on September 8, 2015 which changed the end of the fixed term tenancy date from October 31, 2015 to January 31, 2016. The amendments were provided into evidence and the last signed amendment states the following:

*“...this amendment will extend the lease term from October 31, 2015 for 3 months until January 31, 2016. If a lease extension is not signed by December 15, 2015, then this lease will end on January 31, 2016 and the tenants will move out of the address listed above.”*

[Reproduced as written]

The parties agreed to the correctness of the above wording and confirmed that rent for the tenancy was payable on the first day of each month in the amount of \$1,027.00. The parties confirmed that the Tenants had also paid the Landlord a security deposit of \$463.50 on May 25, 2015 and a pet damage deposit of \$300.00 in October 2015, which the Landlord still retains.

The Tenant explained that they were seeking guidance on the ending of the tenancy agreement as they were of the understanding that the tenancy was going to roll over on a month to month basis after the fixed term end date of January 31, 2016. However, when the Tenant was informed of Section 44(1) (b) of the Act (which is explained below), the Tenant did not dispute this and acknowledged that they simply wanted to know when they had to move out of the rental unit. The Tenant explained that they were prepared to move out of the rental unit at the end of January 2016 and understood that the Landlord was entitled to an Order of Possession.

I then turned my mind to the Tenant's monetary claim. I noted in the Landlord's documentary evidence that he had put forward an offer to settle the Tenant's monetary claim. Therefore, I started off by asking the Landlord whether he was still willing to put such an offer forward to the Tenant during this hearing before I heard any evidence relating to it.

The Landlord stated that he had put forward the offer to the Tenant prior to the hearing to avoid having to go through these proceedings but that he was still interested in settling the Tenants' monetary claim. However, he was not in a position to make such an offer as he claimed that there were unpaid utilities and damages to the rental unit which he needed to see before he would entertain a discussion around settlement with the Tenants.

As a result, the parties both agreed that the Tenant would withdraw the monetary claim to allow the parties to have a discussion about monetary amounts payable to each party at the end of the tenancy. This was also done in an effort to allow the parties to reach resolution on their own terms rather than through a decision emanating from dispute resolution proceedings which may not be favorable to the parties.

If the parties are not able to reach a settlement of their own accord then the Tenants are at liberty to re-apply for their monetary claim. The Tenant was informed that she bore the burden to prove her monetary claim and the parties were informed about the strict requirement of Section 38(1) of the Act in relation to the return of the Tenants' security and pet damage deposits at the end of the tenancy.

### Analysis

Section 44 of the Act stipulates how a tenancy ends. In particular, Section 44 (1) (b) of the Act states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

Based on the foregoing evidence before me, I find that the tenancy agreement which was signed and the amended by the parties on September 8, 2015 provided that the tenancy was to end on January 31, 2016. In addition, the amendment specifically requires the Tenants to move out on this date if they are unsuccessful in renewing the agreement.

As there is no evidence before me that the parties have renewed this agreement, I find the tenancy must end on January 31, 2015 as per the signed amended tenancy agreement of September 8, 2015. Accordingly, I grant the Landlord's Application for an Order of Possession for this date. The Landlord must serve the Tenants the order and may then enforce the order through the Supreme Court of British Columbia if the Tenants fail to vacate the rental unit. A copy of the order is attached to the Landlord's copy of this decision.

As the tenancy will now end through the termination of the tenancy agreement, being three days after the date of this hearing, I find the Landlord's Application for an Order of Possession on the basis of cause is now a moot issue and is dismissed. Following from this, I also dismiss the Tenants' Application to cancel both notices to end tenancy as the tenancy is to shortly end.

As the Landlord would have been successful in recovering his filing fee and the parties agreed that the Tenants would withdraw their monetary claim, I decline to order the Tenants the return of their filing fee.

### Conclusion

The Landlord is granted an Order of Possession effective for 1:00 p.m. on January 31, 2016 as this is the date the tenancy is due to end.

The Tenant withdrew the Application for monetary compensation from the Landlord and is at liberty to re-apply. The remainder of the Tenants' Application is dismissed without leave to re-apply.

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 28, 2016

---

Residential Tenancy Branch

