



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LTE VENTURES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPB, MND, MNSD, FF

### Introduction

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

- an order of possession pursuant to section 55;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenants were served with the notice of hearing package via Canada Post Registered Mail on November 4, 2016. The tenant, N.A. (the tenants) confirmed receipt of the hearing package stating that his wife had signed in receipt of it. The landlord confirmed that an online search of the Canada Post Website confirms that the tenants signed in receipt of the hearing package. The landlord stated that the submitted documentary evidence was personally served to the tenant on December 2, 2016. The tenants confirmed receiving the 69 pages of documentary evidence. The tenants have not submitted any documentary evidence. As both parties have attended the hearing and confirmed receipt of the submitted documentary evidence as per sections 88 and 89 of the Act, I am satisfied that both parties have been properly served as per section 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 1, 2015 on a fixed term tenancy ending on October 31, 2016 as shown by the submitted copy of the signed tenancy agreement dated February 2, 2016. The monthly rent is \$946.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$473.00 was paid on November 1, 2015.

The landlord seeks an order of possession for breach of the signed tenancy agreement and a monetary order for damage to the rental property and recovery of the filing fee.

The monetary claim consists of:

\$89.25	Carpet Cleaning Costs
\$103.70	Drapery Cleaning Costs
\$100.00	Suite Cleaning Costs
\$806.40	Paint Remediation Costs

The landlord stated that the fixed term tenancy ended on October 31, 2016 for which the tenants have refused to vacate. The landlord stated that the length of the tenancy was stipulated in section 3 of the signed tenancy agreement as "The length of tenancy is for a fixed length of time, ending on 10/31/2016". It also states, "At the end of this fixed length of time, the tenancy ends and the Tenant must move out of the residential unit. At the Landlord's option, a lease renewal may be negotiated with the Tenant."

The tenants confirmed that the signed tenancy agreement was for a fixed term tenancy, but that he was having difficulties in trying to locate a new residence.

The landlord has stated that she anticipates that the tenant will not clean the rental unit or remediate the walls which require painting. As such, the landlord seeks a monetary order for \$1,099.35 for the cleaning and painting of the rental unit.

### Analysis

Section 55 (2) (c) of the Act states that a landlord may request an order of possession of a rental unit when the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term.

In this case, I accept the undisputed affirmed evidence of the landlord and find that there is a fixed term tenancy that began on November 1, 2015 and ended on October 31, 2016. A copy of section 3 of the signed tenancy agreement shows that this was a fixed term tenancy ending on October 31, 2016. The tenant confirmed in his direct

testimony that the fixed term tenancy ended on October 31, 2016 and that because of personal issues he as yet has not been able to find new accommodations. As such, I find that the landlord is entitled to an order of possession to be effective 2 days after it is served upon the tenant.

As for the landlord's monetary claim, I find them pre-mature. Although the landlord has provided reasons for seeking the claim before the end of the tenancy, the tenants are responsible for the tenancy until the end of the tenancy and are entitled to that right to rectify any issues (ie. Cleaning or painting) before the end of the tenancy. As such, the landlord's monetary claim is dismissed with leave to reapply.

The landlord having been substantially successful is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an order of possession.

The landlord's monetary claim is dismissed with leave to reapply.

The landlord is granted a monetary order for \$100.00 for recovery of the filing fee.

The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant must be served with the monetary order. Should the tenant fail to comply with the order, the 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: December 20, 2016

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Residential Tenancy Branch