



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAMELE'AWT QWEESOME HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPM

### Introduction

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

- an Order of Possession for a Mutual Agreement to End a Tenancy, pursuant to section 55 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Landlord's agents C.E. and A.T. attended and spoke on behalf of the housing society landlord and are herein referred to as "the landlord".

As both parties were in attendance, service of documents was confirmed. The tenant confirmed receipt of the landlord's Notice of Hearing and evidence, which was served on the tenant by Canada Post registered mail, in accordance with section 89 of the *Act*. The tenant confirmed that she did not submit any evidence for this hearing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence by the landlord. Both parties confirmed that terms of the tenancy agreement as follows:

- This month-to-month tenancy began on April 1, 2015.
- Monthly rent of \$635.00 is payable of the first of the month.
- The tenant paid a \$500.00 security deposit at the beginning of the tenancy which continues to be held by the landlord.

The tenant confirmed that she was issued with a notice to end tenancy by the landlord. The landlord submitted into evidence a copy of the One Month Notice to End Tenancy for Cause (One Month Notice) dated June 25, 2018, with an effective vacancy date of July 31, 2018.

The tenant testified that she did not file an application to dispute the notice within the 10 days provided by the Act. The tenant acknowledged that it was her “own fault” because by the time she had opened up and read the notice, it was already past the 10-day time limit to file an application to dispute it.

The landlord testified that they met with the tenant to discuss options given that she had not disputed the notice. The landlord agreed to provide the tenant with an additional month to allow her more time to find housing. As such, the Mutual Agreement to End Tenancy (Mutual Agreement) provided an end date of August 31, 2018. The landlord submitted a copy of the Mutual Agreement into evidence. The Mutual Agreement is signed by both parties on July 17, 2018 and states that “The tenant(s) hereby agrees to vacate the above-named premises/site at: 1:00p.m. on the 31 day of August, 2018”.

The tenant testified that she signed the Mutual Agreement under duress, that she felt forced into signing the agreement. When asked to describe her definition of duress, the tenant stated that it meant she had no other options but to sign the mutual agreement to keep a roof over her head and her children’s heads. The tenant confirmed that she did not sign the agreement due to any threats or fears for her safety.

The tenant stated that she had been looking for housing but had not been successful in securing new accommodations and requested more time. The landlord stated that another family was waiting to move into the tenant’s rental unit and therefore they were unable to extend any more time to the tenant to search for other housing.

### Analysis

Section 44 of the *Act* states that a tenancy ends if the landlord and tenant agree in writing to end the tenancy.

Section 55(2)(d) of the *Act* states that a landlord may request an order of possession for a rental unit when the landlord and tenant have agreed in writing that the tenancy is ended.

In this case, there was no dispute that both parties signed a Mutual Agreement to End a Tenancy, completed using an approved Residential Tenancy Branch form, with an agreed upon end date to the tenancy of August 31, 2018.

The basis of the tenant's dispute is that she signed the mutual agreement under duress. The tenant testified that she felt she had no other options in order to keep a roof over her head.

Black's Law Dictionary, 6<sup>th</sup> edition, defines duress, in part, as:

*Any unlawful threat or coercion used by a person to induce another to act (or to refrain from acting) in a manner he or she otherwise would not (or would).*

*Subjecting person to improper pressure which overcomes his will and coerces him to comply with demand to which he would not yield if acting as free agent.*

I find that the tenant's explanation for why she signed the Mutual Agreement does not meet the criteria for duress.

Therefore, I find there is sufficient evidence to demonstrate that the parties entered into a Mutual Agreement to End a Tenancy, with an effective date to end the tenancy on August 31, 2018, and that there is insufficient evidence presented to prove that the tenant signed the Mutual Agreement under duress.

I accept that the effective date for ending the tenancy as noted on the Mutual Agreement has now passed, and the tenant does not intend to vacate the rental unit.

Section 55(3) of the *Act* provides that an order of possession may be granted to a landlord before or after the date when a tenant is required to vacate a rental unit, and that the order takes effect on the date specified in the order.

As the effective date for ending the tenancy has now passed, I grant the landlord an Order of Possession to be served on the tenant. If the tenant does not vacate the rental

unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

### Conclusion

I grant an Order of Possession to the landlord effective **two days** after service of this Order on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: November 01, 2018

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Residential Tenancy Branch