



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

#### Landlord:

- an order of possession based on a mutual agreement to end tenancy pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

#### Tenant:

- cancellation of a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49 (the Four Month Notice);
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

No issues were raised with respect to the service of the landlord’s application and evidence submissions on file.

The landlord however testified that he was not served with the tenant’s application. The tenant was not able to provide any details regarding service and could not recall if she

served the landlord. The tenant's application was therefore dismissed with leave to reapply. The tenant's evidence submissions on file were also excluded as the landlord had not been served. I note that the tenant's application being dismissed had no impact on the outcome of this decision as the tenant was filing to dispute a Four Month Notice to End Tenancy but no such notice had been issued to the tenant.

### Issues

Is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy began approximately August 2017. The monthly rent is \$600.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$287.50 at the start of the tenancy.

The landlord testified that on September 9, 2022 the parties entered into a mutual agreement to end the tenancy effective January 1, 2023. A signed Mutual Agreement to End Tenancy form was submitted as evidence. The landlord is requesting an order of possession based upon this mutual agreement and states that the tenant failed to vacate as per the effective date of the notice.

The tenant acknowledged signing the mutual agreement to end tenancy. In her testimony the tenant acknowledged that the landlord was clear as to what she was signing and even advised her the landlord's intention was to renovate the building. The tenant submits that after she signed the form she learned that tenants in other units had been served with a notice for renovations. The tenants submits that due to the housing crisis she has nowhere to go and the rents are considerably higher. The tenant wishes to be able to stay or move out temporarily during the renovation work.

In reply, the landlord submits that the tenant was advised as to what she was signing and the RTB form clearly explains the tenant's rights at the top of the form. The landlord submits the tenant was offered two months free rent which she agreed to at the time of signing. At the time of signing, the tenant also stated that moving would not be an issue as she had family in another city she could move to.

### Analysis

Pursuant to section 44(1)(c) of the Act, a tenancy ends if the landlord and tenant agree in writing to end the tenancy. Pursuant to section 55(2)(d) of the Act, a landlord may request an order of possession of a rental unit if the landlord and tenant have agreed in writing that the tenancy has ended.

The tenant and landlord agreed in writing that the tenancy would end on January 1, 2023. The landlord was entitled to possession of the rental unit effective this date. There was no evidence before me that the tenant signed this agreement under duress. I find the tenant was aware and understood what she was signing at the time as per her own testimony and that of the landlord's.

The landlord is granted an Order of Possession pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. The landlord continues to hold a security deposit of \$287.50. I allow the landlord to retain \$100.00 from the security deposit in full satisfaction of the monetary award pursuant to section 38 of the Act.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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.

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: April 03, 2023

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Residential Tenancy Branch