



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPL, FF

### Introduction

The hearing was scheduled in response to an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that on October 17, 2014 the Application for Dispute Resolution and the Notice of Hearing were posted on the door of the rental unit. The Tenant acknowledged receipt of these documents.

On November 10, 2014 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were posted on the door of the rental unit on November 10, 2014. The Tenant acknowledged receiving these documents when he returned to his unit on November 13, 2014 and they were accepted as evidence for these proceedings.

On October 29, 2014 the Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant cannot recall how, or when, these documents were served to the Landlord. The Landlord acknowledged receiving these documents, although he cannot recall the date of service, and they were accepted as evidence for these proceedings.

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### Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession?

### Background and Evidence

The Tenant stated that he moved into the rental unit on March 15, 2011, at which time a different individual owned the unit. The Landlord stated he purchased the rental unit on September 18, 2014. The Tenant does not dispute that the Landlord purchased the unit on that date.

The Landlord submitted a copy of the contract of purchase and sale for the rental unit, which indicates the offer to purchase the rental unit was accepted on August 22, 2014, subject to

conditions that were to be completed by August 29, 2014. The Tenant did not dispute the content of this contract.

The Landlord submitted a copy of a tenancy agreement, which was provided to him by the previous owner. The Tenant stated that he printed his name on page six of this agreement, although he did not sign it with his usual signature. The Tenant stated that he has paid rent for the rental unit since March 15, 2011.

The Landlord and the Tenant agree that rent of \$850.00 is due by the first day of each month, which is consistent with the terms of the tenancy agreement.

The Landlord stated that he wants this tenancy to end because he wants his parents to move into the rental unit. The Tenant stated that at one point the Landlord told him he intended to use the rental unit for a daycare. The Landlord denies making this statement and he stated that he does not intend to use the unit as a daycare.

The Landlord submitted a contract of purchase and sale addendum, dated August 22, 2014, in which the Landlord informed the seller that he wanted the seller to provide the Tenant with legal notice to end the tenancy. The Tenant did not dispute the content of this document.

The Landlord stated that a Two Month Notice to End Tenancy for Landlord's Use of Property was posted on the door of the rental unit by the previous owner on September 12, 2014. The Tenant acknowledged receiving the Notice on September 12, 2014.

The Two Month Notice to End Tenancy, which the parties agree was dated September 12, 2014, declared that the Landlord was ending the tenancy because all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the purchaser or close family member intends, in good faith, to occupy the rental unit. A copy of this Notice to End Tenancy was submitted in evidence. The Notice to End Tenancy, which appears to be signed by the previous owner, declared that the Tenant must vacate the rental unit by November 12, 2014.

The Tenant contends that the Two Month Notice to End Tenancy should be set aside, in part, because it was served by the previous owner instead of the current Landlord.

The Tenant contends that the Two Month Notice to End Tenancy should be set aside, in part, because this matter was considered on October 16, 2014 at a previous dispute resolution proceeding, the file number of which is recorded on the first page of this decision. I note that I was the Arbitrator in that matter.

The Tenant contends that after the hearing on October 16, 2014 I set aside this Two Month Notice to End Tenancy. I read some relevant portions of my decision to the parties on November 27, 2014, including a portion of the conclusion, which reads: "As the One Month Notice to End Tenancy that was served on July 01, 2014 does not serve to end this tenancy, this tenancy must continue until it is ended in accordance with the *Act*". The Tenant stated that he believed this was an error and that I was referring to a Two Month Notice to End Tenancy.

The Tenant contends that the Two Month Notice to End Tenancy should be set aside, in part, because the previous owner knew he intended to reside in the rental unit for many years.

The Tenant contends that the Two Month Notice to End Tenancy should be set aside, in part, because he has a disability that makes it difficult for him to move out of the rental unit.

The Tenant contends that the Two Month Notice to End Tenancy should be set aside, in part, because another suite in the residential complex has already been renovated and is now being used for commercial sewing.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a verbal tenancy agreement with the previous owner of the rental unit, which required him to pay rent of \$850.00 by the first day of the month. Given that the Tenant contends he did not sign the tenancy agreement that was submitted in evidence, I cannot conclude that he had a written tenancy agreement with the previous owner.

On the basis of the undisputed evidence, I find that the previous owner of the rental unit entered into an agreement with the Landlord for the sale of the property, and that the conditions of that sale were completed by August 29, 2014.

The *Residential Tenancy Act (Act)* defines a landlord as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

On the basis of the undisputed evidence, I find that the Landlord purchased the rental unit on September 18, 2014. I therefore find that the Landlord became the landlord of this rental unit on September 18, 2014, in accordance with section (b) of the definition of a landlord.

Section 49(5) of the *Act* authorizes a landlord to end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit; that all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

On the basis of the testimony of the Landlord, I find that the Landlord intends, in good faith, to move his parents into the rental unit. Although the Tenant stated that the Landlord told him he intended to use the rental unit for a daycare, the Landlord denies making that statement. In the absence of evidence to corroborate the Tenant's testimony that the statement was made and in the absence of any evidence that shows the Landlord intends to run a daycare in the unit, I can

find no reason to conclude that the Landlord does not intend to use the unit for the stated purpose.

On the basis of the undisputed evidence, I find that the Landlord directed the previous owner, in writing, to give the Tenant legal notice to end the tenancy. I therefore find that the previous owner had grounds to end this tenancy in accordance with section 49(5) of the *Act* and that the previous owner had the right to serve the Tenant with a Two Month Notice to End Tenancy.

On the basis of the undisputed evidence, I find that on September 12, 2014 the Tenant received the Two Month Notice to End Tenancy that is the subject of this dispute, which declares that the Tenant must vacate the rental unit by November 12, 2014.

Section 49(2) of the *Act* stipulates that a Notice to End Tenancy served pursuant to section 49 of the *Act* must end the tenancy effective on a date that is not earlier than two months after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant received this Notice on September 12, 2014 and rent is due by the first of each month, the earliest effective date of this Notice to End Tenancy is November 30, 2014.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy is November 30, 2014.

In determining this matter I have placed no weight on the Tenant's submission that the Two Month Notice to End Tenancy should have been served by the current Landlord, rather than the previous owner. Section 49(5) of the *Act* clearly specifies that in these circumstances the Two Month Notice to End Tenancy should be served by the previous owner.

In determining this matter I have placed no weight on the Tenant's submission that the Two Month Notice to End Tenancy was set aside at the hearing on October 16, 2014. I find that the Tenant has misunderstood my decision of October 16, 2014. After reading that decision again, I am satisfied that I did not consider the merits of this Two Month Notice to End Tenancy on October 16, 2014 and that it is entirely appropriate to consider the merits of this Two Month Notice to End Tenancy at these proceedings.

In determining this matter I have placed no weight on the Tenant's submission that the previous owner knew he wanted to live in the rental unit for many years. In the absence of a fixed term tenancy agreement, I find that the previous owner had the right to end this tenancy even if the Tenant did not wish to end the tenancy.

In determining this matter I have placed no weight on the Tenant's submission that he has a disability that makes it difficult for him to move out of the rental unit. I find that the previous owner had the right to end this tenancy even if the Tenant will have difficulty moving out of the rental unit.

In determining this matter I have placed no weight on the Tenant's submission that another suite in the residential complex has been renovated and is being used for commercial sewing. This has no relevant on the issues in dispute.

After considering all of the evidence, I find that the Landlord has the right to end the tenancy in accordance with section 49 of the *Act* and that the Landlord is entitled to an Order of Possession.

### Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on December 31, 2014. The date of the Order of Possession has been chosen to give the Tenant a reasonable opportunity to vacate the rental unit, given his personal circumstances and because it is unlikely that either party will receive this decision before the end of November. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I grant the Landlord a monetary Order for \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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: November 28, 2014

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Residential Tenancy Branch

