



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, O, FF

### Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated March 26, 2015 ("2 Month Notice"), pursuant to section 49;
- other remedies, identified as a determination regarding the correct effective date of the landlord's 2 Month Notice, pursuant to sections 49 and 53; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent JH ("landlord") and the tenant AN ("tenant") attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she is the property manager for the landlord company named in this application and that she had authority to represent it as an agent at this hearing. The tenant confirmed that he had authority to represent his wife, the other tenant HN named in this application, as an agent at this hearing.

The landlord testified that the tenants were served with the landlord's 2 Month Notice on March 27, 2015, by way of posting to their rental unit door. The tenant confirmed receipt of the landlord's 2 Month Notice on April 15, 2015, by way of email only. As this matter settled between the parties, I decline to make a finding with respect to service of the landlord's 2 Month Notice.

The tenant testified that the landlord was served with the tenants' application for dispute resolution hearing notice and written evidence package on April 28, 2015, by way of registered mail. The tenant was unable to provide a Canada Post tracking number as

proof of service. The landlord confirmed receipt of the tenants' application for dispute resolution hearing notice and a one page written document, dated May 20, 2015. The landlord confirmed that although she did not receive the tenants' additional 14-page written evidence package, the landlord was already in possession of these same documents, including emails, the 2 Month Notice and move-out documents. The landlord also submitted most of the same information in the landlord's written evidence package for this hearing. During the hearing, the landlord consented to proceeding with the hearing on the basis of the tenants' entire written evidence package, including the documents that the landlord did not receive from the tenants. Accordingly, I find that the tenants' entire written evidence package was sufficiently served for the purposes of section 71(2)(c) of the *Act*. On that basis, I advised both parties that I found no prejudice to the landlord in considering the tenants' entire written evidence package at the hearing.

The tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's written evidence package.

#### Preliminary Issues

During the hearing, the tenant request an amendment to correct the name of the landlord company named in this application. The landlord consented to this request. Accordingly, I amend the tenants' application to correct the name of the landlord company, pursuant to my authority to do so under section 64(3)(c) of the *Act*.

During the hearing, the tenant clarified that the tenants did not wish to apply to cancel the landlord's 2 Month Notice; the tenants require a determination about the correct effective date of that notice. Accordingly, the tenants' application to cancel the landlord's 2 Month Notice is abandoned.

#### Issues to be Decided

Is the effective date of the landlord's 2 Month Notice correct?

Are the tenants entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

The landlord testified that this tenancy began on April 1, 2014 for a fixed term of one year, after which it transitioned to a month-to-month tenancy. Monthly rent in the amount of \$2,100.00 is payable on the first day of each month. A security deposit of

\$1,050.00 and a pet damage deposit of \$1,050.00 were paid by the tenants and the landlord continues to retain both deposits. The tenants continue to reside in the rental unit. A written tenancy agreement was provided by the landlord for this hearing. Both parties confirmed that the tenants paid May 2015 rent in full to the landlord.

The 2 Month Notice issued by the landlord indicates an effective move-out date of May 31, 2015. The landlord issued the 2 Month Notice for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

The tenants dispute the effective date of the 2 Month Notice, stating that it should be June 30, 2015 because they received the notice on April 15, 2015. The landlord stated that May 31, 2015 is the correct effective date because the tenants were deemed served on March 30, 2015, three days after the notice was posted on March 27, 2015.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on June 24, 2015, by which time the tenants and any other occupants will have vacated the rental unit;
2. Both parties agreed that the tenants are entitled to one month's free rent compensation, pursuant to section 51 of the *Act*, on the following terms:
  - a. The tenants will not be required to pay any rent to the landlord for the period from June 1 to 24, 2015;
  - b. The landlord will pay the tenants the equivalent of 6 days of rent, totaling \$420.00, by no later than 1:00 p.m. on June 24, 2015, to account for the rent period from June 25 to 30, 2015;
3. The tenant withdrew the tenants' application to recover the \$50.00 filing fee from the landlord.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above terms as legal, final, binding and enforceable, which settle all aspects of this dispute.

## Conclusion

To give effect to the settlement reached between the parties, and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenants and any other occupants on the premises fail to vacate the rental premises by 1:00 p.m. on June 24, 2015. The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order in the event that the tenants and any other occupants do not vacate the premises by 1:00 p.m. on June 24, 2015. 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.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the tenants' favour in the amount of \$420.00. I deliver this Order to the tenants in support of the above agreement for use **only** in the event that the landlord does not pay the tenants \$420.00 in accordance with condition #2(b) of the above monetary agreement. The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible after the landlord does not pay the tenants \$420.00 as per condition #2(b) of the above monetary agreement. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's 2 Month Notice, dated March 26, 2015, is cancelled and of no force or effect. The tenants' application to recover the \$50.00 filing fee is withdrawn. The tenants' application to cancel the landlord's 2 Month Notice is abandoned.

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: June 04, 2015

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Residential Tenancy Branch