



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, CNR, MNDC, MNSD, MT, OLC, FF

### Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a 2 Month Notice to End Tenancy for the Landlord's Use of the property, for compensation for a loss or damage under the Act, regulations or the tenancy agreement, for the return of the security and pet deposits, for the Landlord to Comply with the Act, regulations or tenancy agreement, to recover the filing fee and for more time to make the application.

The Tenants' Counsel said the Tenants served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on May 24, 2016 and the amended application by registered mail on June 3, 2016. Based on the evidence of the Tenants' Counsel, I find that the Landlords were served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties being represented.

### Preliminary matters

The Arbitrator told the parties the Landlord had submitted two evidence packages on June 18, 2016 so this evidence is considered late evidence. The Arbitrator said due to the evidence being submitted 4 days prior to the hearing this did not allow enough time for the Tenants to review and respond to it if they chose to. Consequently the Arbitrator disallowed the evidence packages from the hearing.

### Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Notices to End Tenancy?
2. Are the Tenants entitled to compensation for a loss or damage?
3. Are the Tenants entitled to the return of their security and pet deposits?
4. Has the Landlords complied with the Act, regulations or tenancy agreement?
5. Are the Tenants entitled to more time to make the application?

### Background and Evidence

The Tenants moved into the property on November 11, 2011 under a rent to purchase agreement and this tenancy started on May 1, 2015 as a month to month tenancy. Rent is \$2,200.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant's Counsel said the

Tenants paid a security deposit of \$1,100.00 and a pet deposit of \$1,100.00 in December, 2014. The Landlord said the deposits were not paid.

The Landlord said he service a 10 Day Notice to End Tenancy for unpaid rent by email to the Tenants on June 2, 2016. The Landlord said the Tenants acknowledged his email. The Landlord was informed that email is not a method of service recognized by the Act; therefore the Notice is invalid due to improper service of the documents.

The Landlord said he has also served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated April 29, 2016 as he has sold the property. The Landlord said in a previous hearing it was determined the Tenants had not filed their application in time to dispute this Notice to End Tenancy therefore the Tenants cannot dispute the Notice now. The Landlord said the Tenants received the Notice to End Tenancy on April 29, 2016 and the Tenants tried to include this Notice in a Hearing dated May 18, 2016 but the Arbitrator did not allow the Tenants to amend the application at the hearing. Therefore the Notice to End Tenancy dated April 29, 2016 was not disputed until a second application was made by the Tenants dated May 18, 2016. The Landlord said this was after the 15 day time limit to dispute a 2 Month Notice to End Tenancy for Landlord's Use of the Property; therefore the Tenants can not dispute the Notice. The Landlord requested an Order of Possession if the Tenants application is unsuccessful.

The Tenants' Counsel said the Tenants made an application to dispute a Notice to End Tenancy dated March 29, 2016 and when the Tenants received a second Notice to End Tenancy dated April 29, 2016 the Tenant thought they could include this Notice to End Tenancy in the hearing already scheduled for May 18, 2016. The Tenants had legal counsel and the Tenants did not file an application or an amendment to their first application to dispute or include the Notice to End Tenancy dated April 29, 2016. The Tenants Counsel said the Tenants are requesting more time to make their application to dispute the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated April 29, 2016 because the Tenants did not understand the process to dispute the second Notice to End Tenancy date April 29, 2016 and they thought it could be included in the May 18, 2016 hearing already scheduled.

The Arbitrator referred to the previous decision which was part of the Landlords' evidence package. In that decision it says:

*"The Tenants' Counsel continued to say the Landlord issued another 2 Month Notice to End Tenancy for Landlord's Use of the Property dated April 29, 2016. The Landlord said he personally delivered this Notice to End Tenancy to the male Tenant on April 29, 2016. The Tenants' Counsel said they would like to include this Notice to End Tenancy in the Hearing as well. The Arbitrator noted the Tenants application was made on April 13, 2016 and no amendments have been filed to include the Notice to End Tenancy dated April 29, 2016. Further the Arbitrator said the Notice to End Tenancy dated April 29, 2016 must be disputed within 15 days or by May 14, 2016. Since the time limit to dispute the Notice has past the Notice to End Tenancy is deemed not to have been disputed. As a result the Arbitrator declined to amend the Tenants' application to include the Notice to End Tenancy dated April 29, 2016."*

The Tenants' Counsel requested more time to dispute the Notice to End Tenancy dated April 29, 2016.

Further the Tenants' Counsel said that the Tenants are requesting the return of their security and pet deposits. The Tenants' Counsel continued to say the Tenants are withdrawing the other parts of their application including compensation for \$2,200.00, punitive damages of \$1,000.00 and for the Landlord to comply with the Act, regulations and tenancy agreement.

The Landlord said in closing that he is requesting an Order of Possession because the Tenants filed late to dispute the Notice to End Tenancy.

The Tenants Counsel said the Tenants are not in a situation that they are able to move and the Tenants are requesting to cancel the Notice to End Tenancy and let them continue the tenancy.

### Analysis

Section 88 and 89 of the Act do not include service of a 10 Day Notice to End Tenancy for unpaid rent to be served by email. Consequently the Notice to End Tenancy was not served in accordance to the Act; therefore the Notice is invalid. I order the 10 Day Notice to End Tenancy for unpaid rent dated June 2, 2016 is canceled due to improper service.

With regard to the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated April 29, 2016 and the Tenants application for more time to dispute this Notice. I find the Tenants have not established grounds for a serious and compelling reason for more time to make the application. The Tenants had legal counsel and the Tenants had made a previous application to dispute a Notice to End Tenancy dated March 29, 2016; therefore I find the Tenants had the ability and resources to understand the process of disputing the Notice to End Tenancy dated April 29, 2016. Further I refer to page two on that Notice to End Tenancy in the section "Information for Tenants" where it states that tenants can dispute the Notice to End Tenancy and a tenant must make application within 15 days or they are presumed to have accepted the Notice to End Tenancy and the tenants have to move out on the effective vacancy date on the Notice. In this situation the effective vacancy date is June 30, 2016. I dismiss the Tenants' request for more time to make the application. Consequently the 2 Month Notice to End Tenancy for Landlord's Use of the Property is valid and in full effect.

As the Tenants have been unsuccessful in cancelling the Notice to End Tenancy, pursuant to section 55 of the Act I award the Landlord an Order of Possession with an effective vacancy date of June 30, 2016.

With regard to the security and pet deposits, these items are dealt with at the end of the tenancy and are governed by the Act and regulations. As the tenancy has not ended I will make no rulings on the security and pet deposits. Both parties are at liberty to make applications regarding the security and pet deposits if a dispute arises about the deposits.

As the Tenants Counsel withdrew the other parts of the Tenants application there is no need to comment further on the Tenants' application.

As the Tenants have been unsuccessful in this matter I order the Tenants to bear the cost of the filing fee of \$100.00 that they have already paid.

### Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

The Tenant's application for monetary compensation is dismissed without leave to reapply.

An Order of Possession effective June 30, 2016 has been issued to the Landlord. A copy of the Order must be served on the Tenants in accordance with the Act: the Order of Possession and may be enforced in 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: June 22, 2016

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Residential Tenancy Branch