



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HARTWIG INDUSTRIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, MT, FF

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and more time to do so. The landlord did not appear at the hearing. The tenant testified that he served the landlord with the hearing documents by registered mail sent within three days of filing. The tenant was unable to locate the registered mail tracking number during the hearing but stated that he had tracked the registered mail tracking number previously and saw that the hearing package had been received by the landlord. The tenant requested more time to provide me with proof of service. I authorized the tenant to provide me with proof of service, such as the registered mail receipt and the associated tracking number, within two days of this date. Shortly afterward, the tenant faxed me a copy of the receipt, including tracking number, and print out from Canada Post showing that the tenant sent the hearing package to the landlord on June 27, 2016 and that it was signed for by the landlord's agent on June 28, 2016. Having been satisfied the landlord was duly served with notification of this hearing, I proceed to consider the tenant's application.

### Preliminary and Procedural Matter

The 2 Month Notice that is the subject of this dispute was signed by the landlord's agent on May 24, 2016. The tenant provided evidence, an airline itinerary, that shows the tenant flew out of town in the early morning of May 25, 2016 and returned to town in the evening of June 9, 2016. The tenant testified that he found the 2 month Notice taped to the outside of his mailbox, located in the stairwell that leads from the street entrance to his rental unit, when he returned home in the evening of June 9, 2016. The tenant acknowledged that he received an email from the landlord on June 1, 2016 enquiring as to whether he received the Notice; however, the tenant explained that the email did not include a copy of the 2 Month Notice. The tenant filed this Application on June 23, 2016.

The tenant submitted that since the landlord did not serve him with the 2 Month Notice using one of the permissible methods for service, such as posting on the rental unit door or placing the 2 Month Notice in the mailbox, and the tenant was out of town and did not receive the 2 Month Notice until June 9, 2016 the 15 day time limit for disputing the 2 Month Notice should start on June 9, 2016 at the earliest.

Section 88 of the Act provides for the ways one party is to serve a document to the other party, including Notices to End Tenancy. Section 88(g) includes the following method of service: "attaching a copy to a door or other conspicuous place at the address at which the person resides". Arguably, posting to the outside of the mailbox located at the rental unit could be considered a conspicuous place and the method of service acceptable. Since the tenant did receive the 2 Month Notice, regardless of where it was posted, I find the issue to determine is when the tenant received the 2 Month Notice.

Section 90 of the Act deems a person to have received a document on a particular date if not served in person. Section 90(c) provides that a document is deemed to be received: "if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached". However, the deeming provision of section 90 has been found to be a rebuttable presumption by The Supreme Court of British Columbia. In this case, I find the tenant has provided sufficient evidence to rebut the deeming provision and I find the tenant to be in receipt of the 2 Month Notice on June 9, 2016 when he returned home from his out of town trip. Accordingly, I accept the tenant's argument that he had 15 days from June 9, 2016 to dispute the 2 Month Notice, which he did. Therefore, I have considered the 2 Month Notice to be disputed within the time limit for doing so I proceed to consider the tenant's request to cancel it.

#### Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use of Property signed on May 24, 2016 be upheld or cancelled?

#### Background and Evidence

As provided previously, the tenant received a 2 Month Notice to End Tenancy for Landlord's Use of Property on June 9, 2016 and filed to dispute it within the time limit for doing so. The 2 Month Notice indicates the reason for ending the tenancy is that "the landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be

vacant". The tenant provided documents from the City to show that permits have not been granted for the subject property in recent years.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. In the absence of any submissions from the landlord I find the landlord has not met its burden to demonstrate that the tenancy should end for the reason indicated on the 2 Month Notice that is before me. Therefore, I cancel the 2 Month Notice with the effect that the tenancy continues at this time.

Since the tenant was successful in this Application I award the tenant recovery of the filing fee paid for this Application from the landlord. The tenant is provided a Monetary Order in the amount of \$100.00 and the tenant is authorized to deduct \$100.00 from a subsequent month's rent to satisfy the Monetary Order.

### Conclusion

The 2 Month Notice signed on May 24, 2016 has been cancelled and the tenancy continues at this time.

The tenant has been awarded recovery of the \$100.00 filing fee paid for this Application. The tenant has been provided a Monetary Order in the amount of \$100.00 and has been authorized to deduct \$100.00 from a subsequent month's rent in order to satisfy the Monetary Order.

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: August 04, 2016

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Residential Tenancy Branch