



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNL

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed there were no issues with service of the landlord's 2 Month Notice and the tenants' application for dispute resolution. The parties confirmed receipt of the 2 Month Notice and tenants' application. I find that those documents were served in accordance with sections 88 and 89 of the Act.

The landlord testified that he had not served the tenants with the landlord's evidence. Rule of Procedure 3.15 sets out that a respondent must serve their evidence on the applicant not less than 7 days before the hearing. The tenant's evidence was not served within the timelines prescribed by rule 3.15 of the Rules or at all. Rule 3.17 sets out that an arbitrator has the discretion to admit evidence that does not meet the service criteria where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against them and must have a proper opportunity to respond to that case. As the landlord's evidence was not properly served and I find its inclusion would be prejudicial to the tenant the landlord's written evidence was excluded.

### 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, 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. This tenancy will end on 12:00pm December 31, 2017 by which time the tenants and any other occupant will have vacated the rental unit.
2. The tenants will pay monthly rent in the amount of \$1,500.00 to the new property owner AR beginning on October 1, 2017 and every month thereafter during this tenancy.
3. The tenants may give the landlord notice to end the tenancy on a date that is earlier than one month after the date the landlord receives the notice.
4. The \$550.00 security deposit for this tenancy will be returned to the tenants in full at the end of the tenancy.
5. The parties agreed that this tenancy ends by way of their mutual agreement to end this tenancy and the landlord's 2 Month Notice is withdrawn and of no further effect.
6. This settlement agreement constitutes a full, final and binding resolution of the tenant's application at this hearing.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

#### Conclusion

To give effect to the above noted settlement agreement, and as discussed with them during the hearing, I grant an Order of Possession to the landlord, effective **December 31, 2017 at 12:00 pm**. The landlord is provided with this Order in the above terms and the tenants must be served with this Order in the event that the tenants or any occupant on the premises fails to provide vacant possession in accordance with the settlement terms. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's 2 Month Notice, dated June 30, 2017 is cancelled and of no further effect.

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: September 25, 2017

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Residential Tenancy Branch