



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNL, MNDCT, OLC, LRE, FFT

### Introduction

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

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement and for the cost of emergency repairs pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that he was handed the 2 Month Notice by the landlord's representative on March 30, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlords confirmed that they received individual copies of the tenant's dispute resolution hearing package and 5 pages of written evidence sent by the tenant by registered mail on May 8, 2018, I find that the landlords were duly served with these packages in accordance with sections 88, 89 and 90 of the *Act*. Since the tenant confirmed receipt of the landlord's written evidence, I find that the tenant was duly served with this evidence in accordance with section 88 of the *Act*.

The tenant applied for and received a May 11, 2018 decision on his application for a substituted service order enabling him to serve written evidence by email to the email address identified by the landlord on the Residential Tenancy Agreement (the Agreement). An Adjudicator appointed

under the *Act* declined this application. The Adjudicator noted that no such substituted service order was necessary as the landlord had identified her email address, which remains the current email address for the landlords, as a means of contacting the landlord on the Agreement. The Adjudicator's May 11, 2018 decision has no bearing on the matters before me.

#### Issues(s) to be Decided

Is the tenant entitled to an extension of time to file his application to cancel the landlord's 2 Month Notice? If so, should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to a monetary award for losses, damages and emergency repairs that they undertook arising out of this tenancy? If this tenancy were to continue, are any other orders required?

Is the tenant entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

A copy of the Agreement between Landlord JV and the tenant was entered into written evidence for this hearing. I note that Landlord JV was the landlord for the purposes of this tenancy as she was the only landlord identified on the Agreement she and the tenant signed on October 4, 2016. This Agreement was for a month-to-month tenancy which began on November 1, 2016. According to the terms of the Agreement, monthly rent was set at \$950.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$475.00 security deposit paid on October 4, 2016.

Both parties agreed that at the time they signed this Agreement, the landlord and her husband agreed that the tenant did not need to pay all of the \$950.00 in monthly rent set out in the Agreement. The landlord allowed the tenant to pay \$500.00 for the entire course of this tenancy, until such time as the tenant discontinued paying monthly rent in April 2018, after having received the 2 Month Notice from the landlord. The tenant maintained that this \$450.00 reduction in monthly rent was allowed as the landlord recognized that the rental unit was in poor shape when this tenancy began and that the tenant would be undertaking repairs and upgrades to make the premises more habitable. The tenant gave undisputed sworn testimony and written evidence that he had worked on the rental home since this tenancy began, which increased the value of the property considerably.

The tenant had indicated from the outset of his tenancy, he had indicated that he may be interested in purchasing the home. There were negotiations between the two parties which resulted in a Contract of Purchase and Sale being prepared and signed by both parties in August 2017. Although this proposed sale did not get finalized, the parties have continued discussions immediately following the landlord's issuance of the 2 Month Notice and even shortly before this hearing. None of these negotiations have led to a sale of the property from the landlord to the tenant.

At the hearing, I noted that neither party had provided a complete copy of the landlord's 2 Month Notice, which was to have taken effect by May 31, 2018. The tenant entered into written evidence the first page of the 2 Month Notice. At the hearing, the landlords gave undisputed sworn testimony that the sole reason identified in the 2 Month Notice was that the landlord needed the rental unit for personal use as she and her family were intending to live there.

The tenant's application for a monetary award of \$10,000.00, plus recovery of the filing fee for his application, was to reflect repairs and upgrades he undertook during his tenancy under the understanding that the landlord would be selling the property to him. The tenant maintained that the true monthly rent throughout his tenancy was \$500.00 and that the parties agreed from the outset of this tenancy that the \$950.00 cited in the original Agreement was not going to be pursued by the landlord.

### 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 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 resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on August 15, 2018, by which time the tenant will have surrendered vacant possession of the rental unit to the landlord.
2. Both parties agreed that this tenancy ends on the basis of the landlord's 2 Month Notice of March 30, 2018.
3. The landlords agreed that they would not pursue any measures to recover unpaid rent owed by the tenant during the course of this tenancy and that the tenant is not responsible for the payment of any rent for the remaining period of this tenancy.
4. The tenant agreed to let the landlord keep his security deposit.
5. The tenant agreed to leave the rental unit reasonably clean and undamaged at the end of this tenancy.
6. Both parties agreed that this settlement agreement constituted a final and binding resolution of all aspects of the tenant's application, and furthermore agreed that neither party will pursue any monetary claim of any type in the future for issues arising out of the issues currently in dispute, and that they did so of their own free will and without any element of force or coercion having been applied.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises by 1:00 p.m. on August 15, 2018 in accordance with their agreement. The

landlord is provided with these Orders in the above terms and the tenant must be served with an Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. Should the tenant 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, I order the landlord to retain the tenant's security deposit.

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, 2018

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Residential Tenancy Branch