



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, FFL, CNL, OLC

### Introduction

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

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use, pursuant to section 49; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;

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

- an Order of Possession for landlord's use of property, pursuant to section 49; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

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

The landlord testified that she taped the notice of dispute resolution package to the tenant's door on July 13, 2018. The tenant confirmed receipt of the dispute resolution package on July 13, 2018. While the tenant was not served with the notice of dispute resolution package in accordance with section 89 of the *Act*, since the tenant confirmed receipt of the notice of dispute resolution package on the date it was posted, I find that the notice of dispute resolution package was sufficiently served for the purposes of this *Act* on July 13, 2018, pursuant to section 71 of the *Act*.

The tenant testified that he personally served the landlord with his notice of dispute resolution package, but did not recall on what date. The landlord testified that she received the tenant's notice of dispute resolution package in person on July 8, 2018. I find that service of the tenant's notice of dispute resolution package was effected on the landlord on July 8, 2018, in accordance with section 89 of the *Act*.

#### Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62 of the *Act*?
3. Is the landlord entitled to an Order of Possession for landlord's use of property, pursuant to section 49 of the *Act*?
4. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2018 and is currently ongoing. Monthly rent in the amount of \$1,600.00 is payable on the 30<sup>th</sup> - 31<sup>st</sup> day of each month for the following month. A security deposit of \$800.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for these applications.

Both parties agree that the landlord personally served the tenant with a Two Month Notice to End Tenancy with an effective date of August 31, 2018 (the "First Two Month Notice") on June 27, 2018. Both parties agree that the landlord only served the first page of the three-page notice. The First Two Month Notice was entered into evidence.

On July 12, 2018, the tenant filed with the Residential Tenancy Branch (the "RTB") to dispute the First Two Month Notice.

Both parties agree that the landlord personally served the tenant with a Two Month Notice to End Tenancy with an effective date of September 30, 2018 (the "Second Two Month Notice") on July 14, 2018. Both parties agreed that the landlord served all three pages of the Second One Month Notice. The Second One Month Notice was entered into evidence.

The landlord testified that she served the tenant with the Second Two Month Notice because she did not serve all three pages of the First Two Month Notice. The landlord testified that she signed the Second One Month Notice, but forgot to write her name beside her signature.

On July 30, 2018, the landlord filed with the RTB for an Order of Possession for landlord's use of property based on the Second Two Month Notice. The tenant testified that he did not file with the RTB to dispute the Second Two Month Notice.

The Second Two Month Notice stated the following reason for the issuance of the notice:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Both parties agree that the landlord currently resides in the top floors of the property in question and the tenant resides in a separate suite in the house. The landlord testified that her daughter and son in law are going to purchase 2/3rds of the house from her and she will move into the suite currently occupied by the tenant. The landlord testified that her daughter and son in law are already living with her in the house and she will move into the suite as soon as it is vacated.

The tenant applied for an Order that the landlord comply with the *Act*, regulation or tenancy agreement pursuant to section 62 of the *Act*. The tenant testified that he is seeking more time to find new place to live but could not point out a section of the *Act*, regulation or tenancy agreement that the landlord breached.

### Analysis

Section 52 of the *Act* states that when a notice to end tenancy is given by a landlord, it must be in the approved form. Based on the testimony of both parties, I find that the

First Two Month Notice was not in the approved form as the last two pages of the notice were not served on the landlord. I find that the First Two Month Notice is of no force or effect.

Based on the testimony of both parties and the evidence provided, I find that service of the Second Two Month Notice was effected on the tenant on July 14, 2018, in accordance with section 88 of the *Act*.

Residential Tenancy Policy Guideline 11 states that an arbitrator is permitted to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in the circumstances. In determining if a person "should have known" particular facts, an arbitrator will consider whether a reasonable person would have known these facts in the same circumstances. In determining whether it is "reasonable in the circumstances" an arbitrator will look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

I find that the tenant knew or ought to have known the landlord's name which was omitted next to the signature on the Second Two Month Notice. The landlord's name was spelled out in an earlier section of the Second Two Month Notice and the tenant was aware of the name of his landlord. I find that the tenant is not unfairly prejudiced by amending the notice. Pursuant to section 68 of the *Act*, I amend the Second Two Month Notice to include the name of the landlord next to the landlord's signature.

Section 49(5) and section 49(6) state that if a tenant who has received a Two Month Notice does not make an application for dispute resolution within 15 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this case, the tenant did not dispute the Second Two Month Notice within 15 days of receiving it. I find that, pursuant to section 49 of the *Act*, the tenant's failure to file to dispute the Second Two Month Notice within 15 days of receiving the Second Two Month Notice led to the end of this tenancy on the effective date of the notice. In this case, this requires the tenant to vacate the premises by September 30, 2018.

I find that the landlord is entitled to an Order of Possession effective September 30, 2018. The landlord will be given a formal Order of Possession which must be served on

the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on September 30, 2018, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that since the landlord was successful in her application, that she is entitled to recover the \$100.00 filing fee for this application from the tenant, pursuant to section 72 of the *Act*.

I find that the tenant has failed to identify a section of the *Act*, regulation or tenancy agreement that the landlord breached and I therefore dismiss without leave to reapply his application for an Order that the landlord comply with the *Act*, regulation or tenancy agreement.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on September 30, 2018**, which should be served on the tenant. 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.

I issue a Monetary Order to the landlord in the amount of \$100.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

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 04, 2018

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Residential Tenancy Branch