



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OT

### Introduction

The tenant's original application sought cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47 of the *Residential Tenancy Act* (the *Act*). The tenant subsequently amended that application to seek the cancellation of the April 16, 2019 Mutual Agreement to End Tenancy (the Mutual Agreement) the parties signed.

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 Landlord CA (the landlord) confirmed that they received a copy of the tenant's amended dispute resolution hearing package placed in the landlord's mail slot on April 29, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

### Preliminary Issue

On December 13, 2018, the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door. The tenant did not apply to cancel that Notice within the required five days to do so. On February 11, 2019, another Arbitrator appointed pursuant to the *Act* heard the landlord's application for an Order of Possession based on the 10 Day Notice. In a February 11, 2019 decision, that Arbitrator allowed the landlord's application to obtain an end to this tenancy on the basis of the 10 Day Notice and issued a 2 Day Order of Possession to the landlord(see file

referenced above). The tenant subsequently applied for Judicial Review of that decision by the Supreme Court of British Columbia.

At the current hearing, the landlord testified that there have been three separate hearings of the tenant's application for Judicial Review by the Supreme Court. The landlord said that on the most recent appearance before the Supreme Court in May 2019, the presiding Justice noted that the tenant had not provided documentation to support their application and turned this matter back to the Residential Tenancy Branch (the RTB). The landlord was unclear as to whether this meant that the RTB had been directed to readjudicate the landlord's original application regarding the 10 Day Notice. The tenant was also somewhat uncertain as to the next step following the Supreme Court's handling of their application for Judicial Review. Neither party entered into written evidence documentation regarding the Supreme Court's review of the tenant's application for Judicial Review of the February 11, 2019 decision by the RTB.

I advised the parties that the only matter properly before me was the tenant's amended application to have the Mutual Agreement set aside. Any follow-up required from the Supreme Court's decision is a totally separate matter involving a different Notice to End Tenancy, the 10 Day Notice issued by the landlord in December 2018. I advised the parties to direct their attention solely to the Mutual Agreement, and not to any of the issues associated with the landlord's original 10 Day Notice, which has been subject to decisions by another Arbitrator appointed pursuant to the *Act* and by the Supreme Court.

#### Issues(s) to be Decided

Is the Mutual Agreement to End Tenancy signed on April 16, 2019 valid?

#### Background and Evidence

This tenancy began in November 2015. The current monthly rent is set at \$926.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$430.00 security deposit and \$100.00 pet damage deposit. The tenant gave undisputed sworn testimony that they have paid their monthly rent for the month of June 2019.

After the tenant applied for Judicial Review, the tenant sought the assistance of a legal clinic operating out of the Law School of the University in the tenant's municipality. With

the assistance of an articling student who received support and guidance from the experienced legal counsel who is Director of that Clinical Law Program, arrangements were made with the landlord to end this tenancy on June 30, 2019, by way of the Mutual Agreement. In the concluding sentence of that Agreement, the Director of the Clinical Law Program noted the following in an April 15, 2019 letter sent to the landlord:

*...It is our understanding that Ms. B will pursue her Petition for Judicial Review, and (the landlord) will not take any action to enforce the Order of Possession obtained on February 11, 2019. Please confirm your understanding of these terms...*

In an email from Landlord KW the following day, the landlord confirmed the above understanding of the terms of the Mutual Agreement, enabling this tenancy to continue until June 30, 2019.

The day after the tenant signed the Mutual Agreement, the tenant applied to the RTB to have the Mutual Agreement set aside and cancelled. Although the tenant confirmed having received legal advice from the articling student assigned her file, and as supported by the legal counsel who was Director of the Clinical Program, the tenant testified that she felt pressured to sign the Mutual Agreement. The tenant said that she was in fear of the landlord and was scared that if the Judicial Review were unsuccessful that she would have to vacate the rental unit within two weeks instead of the two months that the Mutual Agreement enabled her to remain in the rental unit. The tenant testified that she was also intimidated by the articling student's indication that there could be legal costs involved in pursuing the Judicial Review application that the tenant would have to bear. Although the tenant's witness was not involved in the discussions between the tenant and her legal representatives, the tenant's witness confirmed that the tenant was scared and frightened by the situation she was facing when she signed the Mutual Agreement.

The landlord testified that the tenant received legal advice from a legal representative who was acting on the tenant's behalf in negotiating the terms of the Mutual Agreement that the tenant signed. The landlord observed that the legal advice provided to the tenant was likely very sound, given what eventually transpired when the tenant attempted to pursue her Judicial Review application.

Landlord KW gave undisputed sworn testimony that he spoke with the articling student who represented the tenant and that Landlord KW was assured that the tenant fully understood what she was agreeing to when she signed the Mutual Agreement.

Landlord KW said that the articling student was shocked that the tenant changed her mind the following day after signing the Mutual Agreement.

### Analysis

I should first note that there is no legal provision in the *Act* whereby a tenant can seek the cancellation of or the setting aside of a Mutual Agreement they signed.

Paragraph 44(1)(c) of the *Act* provides the following description of how a tenancy may end when the landlord and tenant agree in writing to end the tenancy. In this case, the representatives of the landlord and the tenant's legal representative used the RTB's standard Mutual Agreement to End Tenancy form to outline the details of this agreement. Both the tenant's legal representative in writing and the landlord through an email confirmed the terms of this Mutual Agreement, noting that this tenancy was to end on June 30, 2019.

Based on a balance of probabilities, I find no reason to set aside or cancel the Mutual Agreement. The tenant sought out, retained and followed the advice of a legal representative in considering and agreeing to the terms of the Mutual Agreement. Although the tenant may very well have had conflicting emotions in signing the Mutual Agreement, there is insufficient evidence that would demonstrate that either the landlord or the tenant's own legal representatives failed to explain the implications of the tenant agreeing to enter into this Mutual Agreement to end this tenancy. By signing the Mutual Agreement, the tenant obtained additional time to seek out alternative accommodations, far more time than would have been provided had the tenant complied with the 2 Day Order of Possession issued by the Arbitrator in the previous hearing of the landlord's application. Under these circumstances, I find that the Mutual Agreement remains valid and in force. On this basis, I order the tenant to honour the terms of the Mutual Agreement the tenant signed and vacate the rental unit by June 30, 2019, in accordance with the Mutual Agreement.

Section 55(1) of the *Act* reads in part as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*  
*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...*

Although the tenant initially attempted to cancel the landlord's 1 Month Notice, the tenant amended that application as no such Notice had been given by the landlord. As such, I cannot issue an Order of Possession to the landlord on the basis of section 55(1) of the *Act*.

As I find that the Mutual Agreement remains in force, I order that the tenant must vacate the rental unit by June 30, 2019. In the event that the tenant does not comply with this order and the terms of the Mutual Agreement, the landlord may apply for the issuance of an Order of Possession pursuant to paragraph 55(2)(d) of the *Act*, which reads in part as follows:

*(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:...*

*(d) the landlord and tenant have agreed in writing that the tenancy is ended...*

### Conclusion

I dismiss the tenant's application. The Mutual Agreement to End Tenancy signed on April 16, 2019 remains in effect. I order the tenant to vacate the rental unit in accordance with the terms of the Mutual Agreement by 12:00 p.m. on June 30, 2019.

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 04, 2019

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Residential Tenancy Branch