



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, OLC, LRE, PSF, MNDCT

### Introduction

On May 29, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 pursuant of the *Residential Tenancy Act* (the "Act"), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to suspend or restrict the Landlord's right to enter the rental unit pursuant to Section 70 of the *Act*.

On May 31, 2019, the Tenant amended her Application seeking a request for monetary compensation pursuant to Section 67 of the *Act* and seeking that the Landlord provide services or facilities pursuant to Section 62 of the *Act*.

Both the Tenant and Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served the Notice of Hearing and evidence package by posting it to his door on or around May 29, 2019 and the Landlord confirmed receipt of this package. As per this undisputed testimony, while this was not served in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Tenant's Notice of Hearing and evidence package, and I continued the hearing.

As well, she confirmed that the Landlord was served the Amendment by registered mail on or around May 31, 2019 and the Landlord confirmed receipt of this package. As per this undisputed testimony, I am satisfied that the Landlord was served with the Tenant's Amendment.

The Landlord advised that the Tenant was served with his evidence on July 3, 2019 by hand and the Tenant confirmed receipt of this package. As per this undisputed testimony, as this evidence was served pursuant to the timeframe requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenant was served with the Landlord's evidence. As such, I have accepted this evidence and will consider it when rendering this decision.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's Notice, that her other claims would be dismissed, and that the Tenant is at liberty to apply for these claims under a new and separate Application.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 15, 2012 and that rent was currently \$550.00 per month, due on the fifteenth day of each month. A security deposit of \$275.00 was paid.

The Landlord advised that the Notice was served to the Tenant by registered mail on May 14, 2019 and the Tenant advised that this was received on or around May 26, 2019. The reason the Landlord served the Notice is because the "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)." The Tenant advised that she received the Notice and subsequently made her Application to cancel the Notice as she needed more time to find a place to move. The effective date of the Notice was August 16, 2019.

### Settlement Agreement

I raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord and the Tenant agreed as follows:

1. The Two Month Notice to End Tenancy for Landlord's Use of Property is cancelled and of no force or effect.
2. The Tenant will have possession of the rental unit, but must vacate the rental unit by **1:00 PM on December 31, 2019 after service of this Order** on the Tenant.
3. As per the tenancy agreement, rent is owed each month going forward on the day stipulated.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

### Conclusion

I have recorded the terms of settlement in this decision and in recognition of the settlement agreement, based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of May 14, 2019 to be cancelled and of no force or effect.

In addition, in support of the settlement described above and with agreement of both parties, the Landlord is granted an Order of Possession effective at **1:00 PM on December 31, 2019 after service of this Order** on the Tenant. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, the Landlord may file the Order with the Supreme Court of British Columbia and be 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: July 11, 2019

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Residential Tenancy Branch