



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC CNL LRE

### Introduction

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

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- Cancellation of a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") pursuant to section 49; and
- An order restricting the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by their advocate. The named landlord was represented by their family members who acted as agents and counsel (the "landlord").

The landlord confirmed receipt of the tenant's application for dispute resolution dated July 15, 2019. Based on the testimony I find that the landlords were served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they served their evidence on the tenant by posting on the rental unit door and by sending through registered mail on July 28, 2019. The landlord provided a Proof of Service form stating that the evidence was posted on the rental unit door on July 28, 2019 and copies of valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant was deemed served with the landlord's evidence on August 1, 2019, three days after posting, in accordance with sections 88, 89 and 90 of the *Act*.

### Preliminary Issue – Adjournment Request

At the outset of the hearing, the tenant made an oral request that the hearing be adjourned. The tenant's advocate explained that the tenant requires an interpreter as they do not speak or comprehend English. The advocate submitted that they have attempted to make arrangements with 3 different interpreters but none were available on the hearing date. The advocate further explained that the tenant has no family members who are able to assist.

The advocate testified that they have made attempts to obtain an interpreter but have been unsuccessful. The advocate said that the interpreters they have contacted have indicated that they will have availability in September, 2019. The tenant did not submit any documentary evidence in support of their oral submissions requesting an adjournment.

The landlords did not consent to an adjournment.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

Under the circumstances, while I accept that the tenant has some linguistic limitations which impact their ability to participate in a hearing, I find that the tenant's need for an adjournment arises from their own actions or inaction. This is the tenant's application, filed on July 15, 2019. The tenant was aware of the hearing date and had a month to make necessary arrangements. The tenant could have arranged for an interpreter, whether a licensed professional or someone who had some facility with the tenant's language, but failed to do so. While the tenant's advocate testified that they have made efforts to obtain the services of an interpreter, I find there was little evidence of the steps

taken. I do not find the testimony of the advocate to be sufficient to find that the tenant took reasonable steps to prepare for the hearing.

The tenant has participated in previous hearings before the Branch under the file number on the first page of this decision. The tenant ought to have been aware of the requirement that they be prepared to proceed with the hearing at its scheduled date and time. As this was the tenant's application they were aware of the date of the hearing and could have made appropriate preparations. If interpreters whom they have used in the past were unavailable, a reasonable person would have continued to search for an alternate interpreter. I find it unreasonable that after 3 attempts the tenant chose to forego obtaining an interpreter.

Based on the submissions I find that the tenant has not met the criteria for granting of an adjournment. I find that the tenant's failure to have an interpreter present at the hearing is the direct result of the tenant's actions or neglect. I find that there is insufficient evidence that the tenant took reasonable steps to arrange for an interpreter. The tenant was present at the hearing with their advocate. The tenant had a fair opportunity to give testimony and make submissions, any linguistic barrier impacting the opportunity to be heard is borne from the tenant's own actions. I further find that any potential prejudice to the tenant arising from their language barrier is outweighed by the prejudice to the landlord to delay the hearing.

I find that it would be contrary to the principles of natural justice to allow the tenant to seek an adjournment of their own application, on the basis of requiring an interpreter when there is insufficient evidence that they took reasonable actions earlier. At the hearing, I found that the tenant had not met the criteria established for granting an adjournment and proceeded with the hearing.

### 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 in accordance with the 2 Month Notice to End Tenancy for Landlord's Use dated July 4, 2019 on 12:00 pm September 30, 2019, by which time the tenant and any other occupants will have vacated the rental unit.
2. The 1 Month Notice of July 8, 2019 is cancelled and of no further force or effect.
3. This settlement agreement constitutes a 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 settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be served on the tenant by the landlords **only** if the tenant and any other occupants fail to vacate the rental premises by 12:00 p.m. on September 30, 2019. 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.

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: August 15, 2019

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Residential Tenancy Branch