



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding The Bank of Nova Scotia Trust  
Company and [tenant name suppressed to protect privacy]

### **DECISION**

**Dispute Codes**      OPN, FFL

### **Introduction**

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for a tenant's Notice to end the tenancy under section 55 of the *Act*;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant AT did not attend this hearing, although I left the teleconference hearing connection open until 9:55 a.m. to enable the tenant to call into the teleconference hearing scheduled for 9:30 a.m.

The landlords' Legal Counsel TU, and Trust Officer MK attended the hearing. Occupant DAB also attended. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Counsel explained tenant AT was served with the Notice of Dispute Resolution Proceeding together with the evidentiary materials via Canada Post registered mail on October 25, 2019. Counsel provided a Canada Post tracking number confirming receipt of these documents. Tenant AT is therefore deemed to be served on October 28, 2019, with the hearing documents in accordance with section 89 and 90(a) of the *Act*.

### **Preliminary issue – Parties to the Proceeding**

The Trust Company is the landlord of the property and the Administrator of the estate of VC, deceased.

The landlord's Counsel was given an opportunity to upload a letter of authorization onto the Residential Tenancy Portal to ensure that they were acting for the estate of the deceased. Grant of Probate was granted on September 3, 2019 regarding the estate of VC. I have read the letter of authorization. I am satisfied that the Trust Company is the Administrator of the estate and the landlord in this matter.

Counsel explained that a month to month tenancy began sometime in 2016 between landlord VC and tenant AT.

Counsel argues after the death of VC, tenant AT created oral agreements with DAB and other occupiers in the rental unit.

I find that there is no tenancy agreement between the landlord and the tenant DAB as such, there is no contractual relationship in accordance with the requirements of section 34(1) of the *Residential Tenancy Act*.

Pursuant to section 64(3)(c) of the Act, I amend the landlord's application to remove DAB from this application as party to the proceedings as there is no tenancy agreement or contractual relationship with the landlord.

### **Issue(s) to be Decided**

Is the landlord entitled to an order of possession for a tenant's Notice to end the tenancy under section 55 of the *Act*?

Is the landlord entitled to recover the filing fee for this application from the tenant under section 72 of the *Act*?

### **Background and Evidence**

The landlord's Counsel advised that the tenancy began in 2016 with the landlord of the property VC and tenant AT on a month to month basis. The landlord, VC, died on November 19, 2018.

The Trust Company is the Administrator of the estate of VC and the landlord for the purposes of the Tenancy Agreement.

On July 22, 2019, tenant AT notified the Trust Company in writing that he wished to end the Tenancy Agreement and that the property would be vacated no later than October 31, 2019.

The landlord seeks an Order of Possession pursuant to section 55(2)(a) of the *Act*. This section states, "A landlord may request an order of possession of a rental unit if a notice to end the tenancy has been given by the tenant."

The tenant did not attend the hearing and presented no submissions in relation to this application.

### **Analysis**

The landlord seeks an Order of Possession pursuant to section 55(2)(a) and (b) of the *Act*. The landlord submitted several pieces of evidence demonstrating that the tenant sought in writing to end the tenancy effective October 31, 2019. No evidence was presented by the tenant disputing the landlord's evidence.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application.

### **Conclusion**

I am granting the landlord an Order of Possession valid at 1:00 P.M. on December 31, 2019. The tenant AT and any other occupant(s) on the premises must deliver full and peaceable vacant possession and occupation of the said premises to the landlord by December 31, 2019. Should the tenant and other occupants fail to vacate the rental unit, the landlord may apply for an order of possession in the Supreme Court of British Columbia.

As the landlord was successful in the application, they may recover the \$100.00 filing fee from the tenant.

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: December 20, 2019

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Residential Tenancy Branch