



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL-4M, FFT

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a Four Month Notice to End Tenancy for Landlord’s Use of Property (the “Four Month Notice”), and recovery of the filing fee.

I note that Section 55 of the *Act* requires that when a tenant submits an Application 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 is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by an agent for the Landlord (the “Agent”). Although the line remained open for the 28-minute duration of the hearing, the Tenant did not attend. The Agent provided affirmed testimony and was given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision. At the request of the Agent, copies of the decision and any Orders issued in favor of the Landlord will be sent to the e-mail address provided in the hearing.

### **Preliminary Matter #1**

The Agent testified that there was a spelling error in the name of the Landlord and provided me with the correct spelling. As the spelling provided by the Agent matched the spelling of the Landlord’s name in other documents before me for review, I accepted the Agents testimony that there was a spelling error and amended the Application to reflect the correct spelling of the Landlord’s name.

## Preliminary Matter #2

The Agent testified that the Tenant has agreed to vacate the rental unit for one month's compensation, in accordance with the *Act* and the Four Month Notice. The Agent stated that as a result, the Tenant requested that the Application be withdrawn and pointed me to documentary evidence uploaded to the online application system on behalf of the Landlord. The documents consisted of an e-mail, allegedly authored by the Tenant, requesting the Landlord's consent to withdraw the Application, and a letter from the Landlord consenting to the Tenant's request for withdrawal. Although the Agent stated that the Landlord spoke to a staff member at the Branch on the phone and emailed the documents in relation to the Tenant's request for withdrawal to the Branch at the instruction of the Branch employee, no confirmation of this phone call or email was provided to me and the Branch records at both the time of the hearing and of writing this decision, do not reflect that this phone call or e-mail were received.

Rule 5.0.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") states that an *applicant* may withdraw an application any time before the hearing, by notifying the Branch and providing a legible copy of any required documents. Rule 5.0.1 provides several methods through which the applicant can withdraw their application, including by e-mail, however, it also states that an applicant *cannot* withdraw an application to dispute a notice to end tenancy online, and that e-mail withdrawals must be sent at least a week prior to the hearing or they may not be processed by the hearing date, which could result in an arbitrator making a final and binding decision in the matter.

While I understand and appreciate that the Landlord has made efforts to have this matter withdrawn, presumably at the Tenant's request, no contact or request for withdrawal has been received by the Branch directly from the Applicant, which is a requirement under section 5.0.1 of the Rules of Procedure. Further to this, the only documentation I have before me relating to the request for withdrawal was submitted online, contrary to the Rules of Procedure, and there are no Branch records of the e-mail request for withdrawal the Agent stated was sent on behalf of the Landlord; likely because it was submitted less than a week prior to the hearing and has not yet been processed.

As a result of the above, I find that I cannot be satisfied that any request for withdrawal has properly been submitted to the Branch by the Applicant, and I therefore decline to withdraw the Application.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Agent and I attended the hearing on time and ready to proceed, I commenced the hearing as scheduled at 11:00 A.M. on February 27, 2020. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As neither the Tenant nor an agent acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenant's Application, I therefore dismiss the Tenant's Application without leave to reapply.

Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

The Four Month Notice in the documentary evidence before me is signed and dated by the Landlord or an agent for the Landlord, gives the address of the rental unit, states the effective date of the Four Month Notice and the reason for ending the tenancy, and is in the approved form. As a result, I find that it complies with section 52 of the *Act* and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 of the *Act*. The Order of Possession is effective at 1:00 P.M. on March 31, 2020, the effective date of the Four Month Notice.

### Conclusion

The Tenants' Application seeking cancellation of the Four Month Notice is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on March 31, 2020, after service of this Order** on the Tenant. 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 Supreme Court of British Columbia 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: February 27, 2020

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Residential Tenancy Branch