



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPM

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit due to an alleged breach by the tenants of an agreement with the landlord.

The landlord, the tenants, and their legal advocate appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

No issues were raised regarding service of the evidence or application.

Thereafter all parties were provided the opportunity to present their evidence and submissions orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony and submissions of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The landlord submitted that:

- this tenancy began on May 1, 2015;
- the monthly rent was \$1,400.00;
- that on October 9, 2019, the landlord and the tenants signed a mutual agreement to end the tenancy, in which the parties agreed to end the tenancy and the tenants agreed to vacate the rental unit on January 31, 2020; and
- the tenants have not vacated the rental unit.

The landlord submitted a copy of the mutual agreement to end tenancy, which appears to be signed by the landlord and both tenants. The agreement was on RTB-8 form.

#### ***The tenant's legal advocate's submissions included-***

The legal advocate (advocate) submitted that tenant CH did not have the legal capacity to sign the agreement with the landlord, due to his ongoing and long-term diminished mental capacity. The advocate submitted that CH suffers from a psychological disability, which limited his mental capacity to sign the agreement with the landlord.

The advocate submitted that the agreement was therefore rendered invalid and pointed to CH's psychiatrist's report that CH is not "wholly responsible" in situations of conflict. The advocate submitted that the invalidity of the contract rendered the contract as a whole invalid for all parties.

The advocate also submitted that there was an imbalance of power between the landlord and tenants, which created a trauma-based fear of authority in CH.

The advocate submitted tenant NT's relationship with CH is one of long-standing tradition and compliance, as CH was the traditional head of the household.

The advocate agreed that there existed a co-tenancy between CH and NT.

The advocate requested that if I found in favour of the landlord's application and granted the order of possession, that it would be effective on April 30, 2020.

***Landlord's rebuttal included-***

The landlord said she was aware of CH's problem and how to deal with persons with challenges, as her son has limited capacity. As such, when she met with the tenants, the meeting was at a neutral location, in the middle of the room, and that there were no raised voices. The tenants' signature represented their voluntary act.

The landlord confirmed she would agree with an effective date of April 30, 2020, if I granted her an order of possession.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 44 (1) (c) of the Act states that a tenancy ends if the landlord and tenant agree in writing to end the tenancy.

*Residential Tenancy Policy Guideline*, "13. Rights and Responsibilities of Co-tenants" (Guideline 13) sets out the definition of a co-tenant:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Whether CH had limited mental capacity to sign an agreement or not, the co-tenant, NT, signed the document. When a tenancy ends for one co-tenant, it ends for all co-tenants.

On the basis of the undisputed evidence, I find that the landlord and the tenants mutually agreed to end the tenancy, in writing, on January 31, 2020. As such, the tenants were required to vacate the rental unit by that date and that they have not.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective at 1:00 p.m. on April 30, 2020, as agreed by the landlord and at the request of the advocate in case I found in favour of the landlord's application.

Should the tenants fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia. The tenants are advised the costs of such enforcement, including bailiff fees, are subject to recovery from the tenants.

The tenants were reminded that the monthly rent for April 2020 will still be due and owing.

### Conclusion

The landlord is granted an order of possession for the rental unit, effective at 1:00, April 30, 2020.

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: March 6, 2020

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Residential Tenancy Branch