



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Katana Management Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing was scheduled for 9:30 a.m. on this date, via teleconference call, to hear the tenant's application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") dated January 18, 2020. The landlord was represented by one of its shareholders, referred to as AH in this decision, and legal counsel. There was no appearance on part of the tenant despite leaving the teleconference call open 30 minutes.

Legal counsel confirmed that his office received the tenant's proceeding package as the landlord's service address that was provided on the 2 Month Notice was his office.

AH testified that she served her affidavit and other supporting documents to the tenant by posting them to the door of the rental unit on March 20, 2020 in the presence of a witness. A signed Proof of Service was also provided. I accepted that the landlord's materials were duly served upon the tenant and I have considered them in making this decision.

Although the tenant did not appear at the hearing, I did not dismiss the tenant's application solely based on his failure to appear. In consideration of the court's finding in *M.B.B v. Affordable Housing Charitable Association*, 2018 BCSC 2418, the landlord still bears the onus of establishing the validity of a Notice to End Tenancy even where a tenant fails to call into the hearing. Accordingly, I proceed to determine whether the landlord has met the statutory requirements for ending the tenancy.

Issue(s) to be Decided

1. Has the landlord established that it has met its statutory requirements for ending the tenancy under section 49 of the Act?
2. Is the landlord entitled to an Order of Possession?

Background and Evidence

The subject residential property includes a total of four living units: located in the house is a 2 - bedroom unit on the main floor and two 1 - bedroom units; and, there is also a cottage located on the property containing another living unit. The subject rental unit is a 1 bedroom unit located on the second floor.

AH testified that the named landlord is a corporation that purchased the residential property on January 15, 2020 and gained possession of the property on January 16, 2020. The corporation's shares are held by two shareholders, each holding 50% of the voting shares. The landlord provided a copy of the share ledger showing AH holds 50% of the voting shares in the corporation. AH testified that the other shareholder is her sister.

On January 18, 2020 the subject 2 Month Notice was issued by AH and posted to the door of the rental unit. The 2 Month Notice was also sent to the tenant by registered mail. A search of the registered mail tracking number shows that the registered mail was delivered to the tenant on January 24, 2020. The tenant filed to dispute the 2 Month Notice on January 30, 2020 indicating the 2 Month Notice was posted to his door on January 20, 2020. The tenant filed to dispute the 2 Month Notice within the time limit for doing so.

The 2 Month Notice has a stated effective date of March 31, 2020 and the reason for ending the tenancy, as stated on the 2 Month Notice is: "The landlord is a family corporation and a person owning voting shares in the corporation or a close family member of that person, intends in good faith to occupy the rental unit".

AH testified that in deciding to purchase the property and in issuing the 2 Month Notice it had been, and still is, her intention to occupy the 1 bedroom rental unit and her sister will occupy the other 1 bedroom unit. The 2 bedroom unit was vacated by the former tenants and has recently been re-rented to new tenants. Whereas, the existing tenants in the cottage are remaining. AH explained her motivation for ending the tenancy for the subject rental unit is so that she may move out of her parents' home and live much

closer to downtown, where she works. AH testified that she has worked downtown for several years and continues to do so, and she spends approximately 3 hours per day commuting from her parents' home to work in a vehicle that is expensive to operate. By residing in the rental unit, she can save a lot of time and money by not having to commute so far to work.

In filing his Application for Dispute Resolution, the tenant has submitted the following:

"The woman who sold the property to [name of landlord] assured me on 13/01/2020 that they were keeping the tenants. I showed the messy state that the suite was in after they took over the property [date illegible]. I have been a tenant at this location for 28 years. Thereafter they left the Two Month Notice of Eviction on my front door. Moving is going to be extremely onerous for me. I have recently had mobility problems."

AH responded to the tenant's submission as follows:

- AH could not speak to what "the woman", presumably a realtor, had said to the tenant as it was always her intention and that of her sister to occupy the 1 bedroom units in viewing the property and deciding to purchase it.
- AH was unconcerned about a messy condition of the rental unit as it did not impact the decision she had already made to move into the unit.
- The landlord does not have a copy of a tenancy agreement but does not dispute the tenant's assertion he has occupied the rental unit for 28 years.
- AH is uncertain about the tenant's claim of mobility problems as she has seen him go up and down the stairs to the rental unit, located on the second floor, many times a day.

AH testified that the tenant paid rent up to and including the month of March 2020, but rent has not been collected for April 2020. AH requested an Order of Possession as soon as possible but also indicated she was willing to accept an Order of Possession effective on April 30, 2020. AH indicated she is aware that the tenant is entitled to compensation for ending the tenancy for landlord's use of property and indicated the tenant will receive the compensation. AH stated the tenant's monthly rent is \$925.00 per month.

## Analysis

Section 49 of the Act provides a mechanism for a landlord to end a tenancy so that the property may be used by the landlord in certain circumstances. The 2 Month Notice before me is consistent with the reason for ending a tenancy as provided under s. 49(4) which provides:

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 49(1) defines "family corporation" as follows:

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

Section 49(1) also defines "landlord" for purposes of section 49(4) as being:

"landlord" means

...

(b) for the purposes of subsection (4), a family corporation that

- (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
- (ii) holds not less than 1/2 of the full reversionary interest;

I was provided unopposed evidence that the property was purchased by the named corporation on January 15, 2020. I was not provided any evidence to suggest the landlord holds anything less than sole ownership with full reversionary interest of the property exceeding three years. I was provided a copy of the share register showing there are two shareholders holding the voting shares, and AH is one of the shareholders. I also heard testimony from AH that the other shareholder is her sister. Based on this unopposed evidence, I accept that the landlord is a family corporation.

I further accept that AH is a shareholder of the family corporation, meaning if she has a good faith intention to occupy the rental unit, the landlord has met the statutory requirements for issuing the 2 Month Notice. As for AH's intention to occupy the rental unit, I found her motivation to occupy the rental unit so as to move out of her parents' house, along with her sister, to be closer to downtown and work to be logical and reasonable and I accept that her intention to occupy the rental unit is based in good faith.

The tenant appeared to submit that the landlord may have been motivated to end the tenancy after seeing the "messy state" of the rental unit; however, AH denied that to be a factor in her decision and I accept her position in the absence of anything further from the tenant.

In light of the above, I find I am satisfied the landlord had a statutory basis for issuing the 2 Month Notice and I uphold the Notice.

Section 55(1) of the Act provides as follows:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the 2 Month Notice provided to me, I am satisfied that it meets the form and content requirements of section 52 of the Act. For reasons provided above, I have upheld the 2 Month Notice. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

**I provide the landlord with an Order of Possession effective on April 30, 2020.**

**It is important to note that *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020 prohibits a landlord from issuing a Notice to End Tenancy to a tenant during the State of Emergency; however, the Notice to End Tenancy before me was served before the State of Emergency and it remains enforceable. That being said, the enforcement of**

**certain Residential Tenancy Branch orders made during the state of emergency have been affected. Enforcement of Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.**

Having upheld the 2 Month Notice, the tenant is entitled to compensation under section 51 of the Act. The tenant is authorized to withhold rent for the month of April 2020; however, if the tenant pays rent before receiving this decision, I order the landlord to refund the payment to the tenant and ensure the tenant receives the compensation he is entitled to receive under section 51 of the Act which may be in the form of: a month's occupancy free from paying rent, a refund of the rent paid for the last month, or a combination of both.

In keeping with section 50 of the Act, the tenant also remains at liberty to end the tenancy earlier than April 30, 2020 by giving the landlord 10 days of advance written notice and doing so does not deter from his entitlement to compensation under section 51.

### Conclusion

The 2 Month Notice is upheld, and the landlord is provided an Order of Possession with an effective date of April 30, 2020.

The tenant is entitled to compensation equivalent to one month's rent, as provided under section 55(1) of the Act. The tenant is also at liberty to end the tenancy earlier than April 30, 2020 by giving the landlord 10 days of advance written notice.

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: April 03, 2020

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Residential Tenancy Branch