



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPN, FFL

### Introduction

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

- an order of possession for a tenant's Notice to End Tenancy, pursuant to sections 45 and 55; and
- authorization to recover the filing fee, pursuant to section 72 of the Act.

I left the teleconference connection open until 10:05 A.M. to enable the tenants to call into this teleconference hearing scheduled for 9:30 A.M. The tenants did not attend the hearing. The landlord and witness JR attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, his witness and I were the only ones who had called into this teleconference.

### Service of Documents

I accept the landlord's testimony that tenant SP was served with the application and evidence (the Materials) by registered mail on May 28, 2020 in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I deem tenant SP received the Materials on June 02, 2020.

I accept the landlord's testimony that tenant VP was served the materials by e-mail sent on May 28, 2020. A copy of the e-mail was submitted into evidence. E-mails received from tenant VP on May 11, 2020, using the same e-mail address, were submitted into evidence. I find the landlord served the materials to tenant VP in accordance with the Residential Tenancy Branch Director's order dated March 30, 2020.

The Residential Tenancy Branch Director's order dated March 30, 2020 provides that a document served by email is deemed to have been received three days after it was emailed. Tenant VP is deemed to have received the materials on May 31, 2020.

### Issues to be Decided

Is the landlord entitled to:

1. an order of possession for a tenant's Notice to End Tenancy?
2. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is his obligation to present the evidence to substantiate his application.

The landlord testified the tenancy started on August 01, 2019. Monthly rent is \$2,595.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,300.00 was collected and the landlord still holds it in trust. The tenancy agreement was submitted into evidence. The tenancy is for a fixed term period and is supposed to end on March 31, 2021.

The landlord affirmed the tenants served a Tenant's Notice to End Tenancy (the Notice) on February 20, 2020 via registered mail, however, the tenants have not moved out. The Notice, submitted into evidence, states:

Notice to move out as of 1<sup>st</sup> of April 2020

Hello [landlord],

As per our phone conversation back in November 2019 to move out early, this is my official notice to terminate lease as of 1<sup>st</sup> April 2020.

[signed by both tenants]

The tenants did not pay rent for March, April, May or June 2020. The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent on March 05, 2020.

The tenants communicate often with the landlord and affirm they continue to occupy the rental unit. An email received from the tenants on May 11, 2020 states:

As the pandemic is tapering off in BC, we are considering close to move out by the end of this month, even though, we are in financial hardship due to the pandemic.

The landlord and witness JR both affirmed they have observed the tenants living in another house since March 2020.

### Analysis

Based on the undisputed testimony of the landlord, I find the landlord was served the Notice on February 20, 2020, in accordance with section 88 (c) of the Act.

Section 45 of the Act states:

(1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a)is not earlier than one month after the date the landlord receives the notice, and

(b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

**(2)A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that**

(a)is not earlier than one month after the date the landlord receives the notice,

**(b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**

(c)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3)If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4)A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

**(emphasis added)**

Residential Tenancy Branch Policy Guideline 30 states:

A tenant may not use the one month notice provisions of the Legislation to end the tenancy prior to the end of the fixed term except for breach of a material term by the landlord or under section F below (Early Termination for Family or Household Violence or Long-Term Care). Any other one month notice will take effect not sooner than the end of the fixed term.

The Notice served on February 20, 2020 has an effective date of April 01, 2020. The fixed term tenancy is supposed to end on March 31, 2021. Thus, in accordance with section 45 (2)(b) of the Act, I find the tenant can not end the tenancy with the Notice served.

As such, the landlord's application for an order of possession is dismissed without leave to reapply.

As the landlord was not successful in his application, the landlord must bear the cost of his filing fee.

### Conclusion

I dismiss the landlord's application without leave to reapply.

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: June 23, 2020

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Residential Tenancy Branch