



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPN, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

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

Tenants BS and AM and the landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Service of Documents

I accept the landlords' testimony that the three tenants were served with the application and evidence (the Materials) by registered mail on July 02, 2020 in accordance with section 89(2)(b) of the Act. Tenants BS and AM confirmed receipt of their packages. The tracking number for the package addressed to tenant JL 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 JL received the Materials on July 07, 2020.

Pursuant to Rule of Procedure 7.3 this hearing proceeded in the absence of tenant JL.

### Issues to be Decided

Are the landlords 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 parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on April 16, 2019 and the tenants are currently living in the rental unit. Monthly rent is \$2,350.00, due on the 16<sup>th</sup> day of the month. At the outset of the tenancy the landlord collected a security deposit of \$1,175.00 and the landlord still holds it in trust. The tenancy agreement signed by the two landlords and the three tenants was submitted into evidence. The tenancy commenced for a fixed term until April 15, 2020 and continued as a periodic tenancy.

On June 17, 2020 tenant JL served a Notice to End Monthly Tenancy (the Notice) by email sent to the two landlords and two other tenants. Tenant JL affirmed he will move out on July 15, 2020. A copy of the email was submitted into evidence. It states:

Just wanted to let you know that my girlfriend is living in Vancouver now and the spare bedroom isn't big enough for us. Like I told [landlord and BL] this will be my last month at the apartment ( moving out July 15th ) . DT has stated that we all need to meet to finalize the paperwork on everyone's end which we can pick a time and place.

[...]

Let's figure out when everyone is able to meet and we can discuss further the new agreements we are making.

On June 20, 2020 landlord DT emailed the three tenants and confirmed receipt of the Notice. The landlord affirmed the effective end date of the tenancy is August 15<sup>th</sup> 2020. The email states:

This email is to confirm that we received your email dated June 17<sup>th</sup> providing notice to end your tenancy at [tenancy address].

[...]

we accept your notice to end tenancy and it will be effective July 15th which means that, although you may wish to move out sooner, your official tenancy (as far as the agreement is concerned) will terminate on August 15th, 2020.

Landlord DT specifically addressed tenants BL and AM in the same email:

the notice to end tenancy applies to all occupants and is effective as of July 15th , therefore your tenancy agreement will terminate and we intend to take back possession of the unit on August 15th, 2020.

BC Residential Tenancy Branch guidelines provide the landlord the option of initiating a new lease agreement with the remaining occupants (those that did not serve notice), however we have chosen to forego that option.

On June 21, 2020 tenant BL emailed the landlords and other tenants. BL stated: "AM and I are continuing with month to month".

On June 28, 2020 tenant AM emailed the landlords (a copy of this email was submitted into evidence by the landlords). AM stated:

I just wanted to reach out and clarify that I do not agree with what BL has been saying/doing. I fully understand that the tenancy has been legally ended after a formal notice given by JL our co-tenant and that you do not wish to re-sign the lease. I will be leaving by the end of tenancy on August 15th. Anything he chooses to say or do from here is just regarding himself.

The landlords affirmed there is no agreement or protocol on communication with the tenants and they can communicate with either tenant for any tenancy matters as they all signed the same tenancy agreement.

Tenant BL affirmed the email Notice is not a proper notice, as it is not signed and the meeting between the tenants and the landlord did not happen. Tenant BL could not find a new living arrangement because of the pandemic.

Tenant AL affirmed she agrees with the Notice and agrees that the tenancy is ending on August 15, 2020.

### Analysis

The Residential Tenancy Branch Director's order dated March 30, 2020 provides that:

Pursuant to sections 71(2)(b) and (c) of the Residential Tenancy Act and sections 64(2)(b) and (c) of the Manufactured Home Park Tenancy Act, I order that, until the declaration of the state of emergency made under the Emergency Program Act on March 18, 2020 is cancelled or expires without being extended:

- a document of the type described in section 88 or 89 of the Residential Tenancy Act or section 81 or 82 of the Manufactured Home Park Tenancy Act has been sufficiently given or served for the purposes of the applicable Act if the document is given or served on the person in one of the following ways:

the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

Based on the testimony provided by both parties and four email exchanges submitted into evidence, I find the three tenants and the two landlords routinely used email to correspond about tenancy matters. Thus, I find the Notice served by email on June 17, 2020 by tenant JL was served in accordance with the Act and the Director's order.

Section 45(1) 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.

Based on the emails containing the Notice dated June 17, 2020 and the testimony provided by both parties agreeing that rent is due on the 16<sup>th</sup> day of the month, I find the Notice effective service date is July 16, 2020 and the effective end of the tenancy date is August 15, 2020. The correction of the Notice's effective end of tenancy date is in accordance with section 53(2) of the Act.

Residential Tenancy Branch Policy Guideline 13 states:

In a monthly or periodic tenancy, when a tenant serves the landlord with a written notice to end tenancy, the effective date of the notice must be at least one month after the landlord receives the notice and on the day before rent is due. If the tenant gives proper notice to end the tenancy, the tenancy agreement will end on the effective date

of that notice and all tenants must move out, even where the notice has not been signed by all tenants. When a tenant has ended the tenancy by giving written notice, all co-tenants remain responsible for meeting the terms of the tenancy agreement until the effective date of the notice.

Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.

The landlords do not want to enter into a new tenancy agreement with tenant BL.

Section 52 of the Act states:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

As the Notice was properly served by email, in accordance with the Director's order dated March 30, 2020, I find the signature requirement is met by.

I find the Notice does not contain the address of the rental unit. However, the email sent by the landlords to all the tenants confirming receipt of the Notice on June 20, 2020 gives the address of the rental unit. I find all the tenants and the landlord are aware of the address of the rental unit.

The landlord lawfully corrected the effective date of the Notice to August 15<sup>th</sup> 2020 and all tenants were notified.

Based on the above, I find the Notice is in accordance with section 52 of the Act and the tenancy will end on August 15, 2020. Thus, I grant the landlords an order of possession effective on August 15, 2020.

As the landlords were successful in their application, the landlords are entitled to recover the \$100.00 filing fee paid for this application. The landlords are authorized to withhold \$100.00 from the security deposit to recover the fee from the tenants.

Conclusion

Pursuant to section 55(2)(a) of the *Act*, I grant an Order of Possession to the landlords effective **August 15, 2020**. 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.

Pursuant to section 72(2)(b) of the *Act*, I authorize the landlords to retain \$100.00 from the tenants' \$1,175.00 security deposit to recover the filing fee for this application.

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: July 24, 2020

---

Residential Tenancy Branch