



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, FFT

### Introduction

On July 14, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. H.Z. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing and evidence package by posting it to the outside door of the Landlord's apartment building on July 18, 2020, despite this not being an acceptable service method in accordance with Section 89 of the *Act*. However, H.Z. confirmed that the Landlord received this package and he took no issue with the service of this package not complying with the *Act*. As such, I am satisfied that the Landlord was served the Tenant's Notice of Hearing and evidence package. In addition, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

H.Z. advised that the Landlord's evidence was served to the Tenant by hand on August 9, 2020 and the Tenant confirmed receipt of this package. H.Z. did not confirm if the Tenant could view the Landlord's digital evidence before serving it, pursuant to Rule 3.10.5 of the Rules of Procedure; however, the Tenant confirmed that he could view this digital evidence as well. Based on this undisputed testimony, as this evidence was served in accordance with Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenant was appropriately served with the Landlord's evidence. As a result, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

#### Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on or around September 2013 and the Tenant is currently on a month to month tenancy. Rent is established at \$2,200.00 per month and is due on the first day of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 were paid.

H.Z. advised that the Tenant was served the Notice by posting it on the Tenant's door on June 30, 2020. The reason the Landlord served the Notice is because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)" and that the "child of the landlord or landlord's spouse" would be occupying the rental unit. The Tenant advised that he was notified by H.Z. on July 1, 2020 that the Notice was posted on the door and the Tenant confirmed that he received the Notice on July 2, 2020. He

subsequently made his Application to dispute the Notice. The effective end date of the tenancy on the Notice was noted as August 30, 2020.

Neither party submitted a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be provided by H.Z. as it is essential to the matter at hand. A copy of this Notice was provided by uploading it into the Dispute Management System after the hearing. During the hearing, I reviewed the details listed on the Notice and the parties confirmed the accuracy of them.

H.Z. advised that the Landlord is his mother, and she owns the rental unit. Documentary evidence was submitted to support that he is the son of the Landlord. H.Z. stated that he is a full-time student at a US college, and he was forced to re-locate in May 2020 due to the COVID pandemic. He is currently staying in a room of a family friend in BC; however, this was a temporary solution as a result of the pandemic.

He stated that his college recently notified students that courses for the upcoming semester would be provided virtually to ensure the safety of everyone involved by reducing the potential of unnecessarily spreading of the coronavirus. He cited documentary evidence from his college to support this position.

He advised that the Landlord had preliminary communication with the Tenant, in April 2020, regarding the scenario of H.Z. possibly having to live in the rental unit as a result of the unprecedented consequences of the pandemic. Screenshots of these text messages were submitted as documentary evidence as well. The Landlord also attempted to reach some form of compromise with the Tenant due to these unusual circumstances.

The Tenant confirmed that he had a discussion with the Landlord in April 2020 about a possible eviction. He questioned the validity of the Notice as when it was served, H.Z.'s college had a plan in place to welcome students back, but the recent change in this policy happened after the Notice was served. He referenced documentary evidence submitted to support this position.

He also advised that he had been previously pressured to move in 2017 and 2018. As well, the neighbour's house was recently sold. So, it is his speculation that the Landlord

is not intending to use the property for the stated purpose. It is his belief that the rental unit is not a permanent residence for H.Z. to complete his studies.

Finally, he indicated that he was not notified that H.Z. was appointed to represent the Landlord and it is his belief that he should have been informed of this prior to the service of the Notice. Furthermore, it is his belief that the Authorization Letter of Representation for H.Z. to represent the Landlord is invalid because this was completed after service of the Notice, and it is his opinion that H.Z. could not represent the Landlord as her agent. However, he could not direct me to the Sections of the *Act* which would prohibit H.Z. acting as the Landlord's agent. The Tenant also made a submission about the similarity of the handwriting on this Authorization Letter of Representation and alluded to this as potentially being fraudulent; however, he did not provide any more clarification about how H.Z. could not appear as an agent for the Landlord.

H.Z. advised that the Notice was served based on considerations of health and safety. Given the ever-changing rates of infection of the coronavirus, the government health and travel advisories, as well as the college's safety plans, everything is in flux. While the college may have had plans in place to provide in-person courses at the time the Notice was served, the impact of the coronavirus has influenced rapid decisions and forced all parties to react accordingly.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 1 of the *Act* includes an agent in the definition of a Landlord.

Furthermore, Policy Guideline # 26 states that:

An agent acts on behalf of a landlord or tenant, speaks on behalf of, and often appears on behalf of the party. An agent may also be a person who has acted for a party during the course of a tenancy, such as a property manager who acts on behalf of a landlord, and as such may have evidence to present at the hearing. A tenant may appoint any trusted person as their agent. Where a party chooses to attend the hearing, they are entitled to remain with their agent throughout. Unlike advocates, agents have full authority to settle the claims and may be named as a party to the dispute. An agent may:

- Apply for dispute resolution on behalf of the landlord or tenant
- Prepare, organize, serve and submit evidence
- Make submissions on behalf of the party
- Ask questions of the other party and witnesses with respect to their evidence
- Settle claims

Agents may be required to provide written verification that they have been appointed by the landlord or tenant to act or appear on their behalf at the dispute resolution proceeding and that they have full authority to settle a claim. This is particularly important when the agent has not had direct involvement during the tenancy. Written verification is not required where a party attends the hearing with his or her agent.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

The first issue I will address is whether H.Z. can represent the Landlord as her agent. There is no provision in the *Act* that requires the Landlord to advise the Tenant that an agent will be representing her, nor does the *Act* require the Landlord to have written authorization consenting to someone acting on her behalf before any of the duties of a Landlord can be fulfilled. Based on the Policy Guideline, I find that the written authorization is more for the benefit of the Arbitrator to know that a person attending the hearing as an agent of a party has been given permission to do so by that party, and is not attending without that person's consent. Furthermore, as the Tenant has not provided any evidence of how this authorization may be fraudulent or that the Landlord has not authorized H.Z. to represent her in this hearing, I give no weight to the Tenant's submission and I am satisfied that H.Z. attended the hearing as the Landlord's agent.

With respect to the reason the Landlord served the Notice, I find it important to note that evidence has been provided that H.Z. is the Landlord's son, that he is enrolled in studies at a US college, and that due to the ever-changing climate of the pandemic, it is his intention to live in the rental unit to complete his studies remotely as it is the safest option currently.

While I acknowledge the Tenant's submissions that the college may have been offering in-person courses at the time the Notice was served, I find it reasonable to infer that based on the unprecedented nature of the pandemic and the continuously changing efforts to ensure personal safety, any established plans have had to rapidly evolve in response to the significant changes in the spread of the coronavirus. Given the unusual circumstances we find ourselves in, I do not find it reasonable for the Tenant to rely on the college's back to school plan that was enacted months prior to the opening of the school semester as the basis that the Notice was not served in good faith. Moreover, the consistent and undisputed evidence is that as far back as April 2020, the Tenant was aware that H.Z. may need to live in the rental unit as it would not have been safe to travel to attend school.

When reviewing the totality of the evidence before me, I find that there is ample evidence to corroborate that H.Z. will be occupying the rental unit once vacant, out of necessity, to continue his education, possibly until it is safe to go back to school. Despite the Tenant's speculation about a potential sale of the rental unit, or of him being evicted for another reason, I do not find that there is any evidence to conclude that the Landlord has another purpose or an ulterior motive for ending the tenancy with this Notice. As such, I am satisfied that the Landlord has substantiated that she intends to use the rental unit for the stated purpose and as such, there are no grounds to cancel the Notice.

As the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on June 30, 2020 complies with the requirements set out in Section 52, I uphold the Notice, I dismiss the Tenant's Application, and I find that the Landlord is entitled to an Order of Possession.

However, as this Notice was posted on the door on June 30, 2020 and the Tenant acknowledged that he received it on July 2, 2020, Section 53 of the *Act* indicates that the noted effective end date of the tenancy on the Notice of August 30, 2020 will automatically self-correct to September 30, 2020. As a result, the Order of Possession is effective at **1:00 PM on September 30, 2020 after service of this Order** on the Tenant, pursuant to Sections 52, 53, and 55 of the *Act*.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective at **1:00 PM on September 30, 2020 after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 21, 2020

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Residential Tenancy Branch