



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPL, CNL

### Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Two Month Notice to End Tenancy for Landlord's Use. The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession on the basis of that Two Month Notice to End Tenancy for Landlord's Use.

The Landlord stated that on December 03, 2020 the Landlord's Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch on November 21, 2020 were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Tenant stated that on November 27, 2020 the Tenant's Dispute Resolution Package was sent to the Landlords with the initials "SD" and "JI". The Tenant submitted documentation from Canada Post that corroborates this testimony. SD acknowledged that these documents were received by her and JI, who is the co-owner of the unit. As these documents were received by SD and JI, the hearing proceeded in the absence of JI.

The Tenant stated that on November 27, 2020 the Tenant's Dispute Resolution Package was sent to the Real Estate Company named as a Respondent on the Tenant's Application for Dispute Resolution, which is the Real Estate Company that acted on behalf of the seller of the rental unit. As the Real Estate Company has never entered into a tenancy agreement with this Tenant, I find that the company should never

have been named as a Respondent in this matter. I therefore amend the Application for Dispute Resolution by removing this party as a respondent to these proceedings. Any Order arising from these proceedings will not name the Real Estate Company.

The Tenant stated that on November 27, 2020 the Tenant's Dispute Resolution Package was served to the Landlord with the initials "GW" by mailing it to the office of the Real Estate Company named as a Respondent to these proceedings. The Tenant stated that on November 27, 2020 the Tenant's Dispute Resolution Package was also served to the Landlord with the initials "GW" by mailing it to the service address the Landlord provided on the Two Month Notice to End Tenancy for Landlord's Use. The Tenant submitted documentation from Canada Post that corroborates this testimony.

The Agent for the Real Estate Company acknowledged that she received these documents, that she acted on behalf of GW during the sale of the rental property, that she is acting on behalf of the Landlord in this matter, and that she informed GW of the Tenant's Application for Dispute Resolution. I find that GW was served with these documents, pursuant to sections 71(2)(c) of the *Residential Tenancy Act (Act)*, when it was served to the Agent for the Real Estate Company, whom I will henceforth refer to as the Agent for the Landlord or DG.

As GW was served with notice of these proceedings and GW was represented at the proceedings by an agent, the hearing proceeded in the absence of GW.

On November 29, 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was sent to the Real Estate Company, by registered mail, on November 29, 2020. DG stated that she was aware registered mail had been sent to the Real Estate Company, she believed this was a duplicate notice for the documents the Tenant mailed on November 27, 2020, she did not regularly attend the office during this time period due to the COVID-19 pandemic, and by the time she viewed the notice of this registered mail the documents had already been returned to the Tenant.

The Tenant stated that the evidence she submitted to the Residential Tenancy Branch on November 29, 2020 was never served to SD or JL.

I note that part of the evidence submitted to the Residential Tenancy Branch on November 29, 2020 by the Tenant was a copy of the residential tenancy agreement, none of which is in dispute at these proceedings. I note that the remainder of the evidence submitted to the Residential Tenancy Branch on November 29, 2020 by the

Tenant was a copy of the Two Month Notice to End Tenancy for Landlord's Use that is the subject of these proceedings.

DG and SD were asked if they wished to adjourn the hearing to provide the Tenant with the opportunity to serve them with copies of the documents the Tenant submitted to the Residential Tenancy Branch on November 29, 2020. Both parties declined the opportunity and declared that they were willing to allow this evidence at these proceedings, even though it has not been received by them. I therefore accept the evidence submitted by the Tenant on November 29, 2020 as evidence for these proceedings.

On December 16, 2020 the Tenant submitted one page of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to DG and GW by registered mail on December 17, 2020 and was subsequently returned to the Tenant because it was unclaimed. DG stated that this evidence was not received.

The Tenant stated that the evidence submitted to the Residential Tenancy Branch on December 16, 2020 was not served to SD or JL.

I note that many the document the Tenant submitted to the Residential Tenancy Branch on December 16, 2021 was essentially a submission written by the Tenant. As the Tenant was given the opportunity to make submissions at the hearing, including anything contained in the written submission of December 16, 2020, and the document submitted on December 16, 2020 was not properly served to all Respondents, I did not consider the document as evidence for these proceedings. I specifically note that the Tenant was given ample opportunity to testify about any of her relevant written submissions.

On January 25, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was left in the mailbox belonging to the SD and JL on January 24, 2021. SD acknowledged receipt of this evidence.

The Tenant stated that the evidence she submitted to the Residential Tenancy Branch on January 25, 2021 was not served to any of the other named respondents.

I note that many of the documents the Tenant submitted to the Residential Tenancy Branch on January 25, 2021 are documents from Canada Post that relate to service, which is evidence of service of documents, rather than evidence for these proceedings. One piece of evidence is a duplicate of a document that was previously accepted as

evidence. The remainder of this evidence relates to payment of rent for February of 2021, which is largely unrelated to the issues in dispute at these proceedings.

DG was asked if she wished to adjourn the hearing to provide the Tenant with the opportunity to serve copies of the documents the Tenant submitted to the Residential Tenancy Branch January 25, 2021. DG declined the opportunity for an adjournment and declared that she is willing to allow this evidence at these proceedings, even though it has not been received by her. As SD and JL were served with this evidence and DG consented to have the evidence admitted, I accept the evidence submitted by the Tenant on January 25, 2021 as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

#### Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside, or should the Landlord be granted an Order of Possession?

#### Background and Evidence

The Tenant stated that this tenancy began on January 01, 2016; that rent is due by the first day of each month; and that she is still living in the rental unit. Neither DG nor SD disputed this testimony.

DG stated that:

- on November 02, 2020 she had a conversation with SD, at which time SD told her that her parents and brother were planning to move into the rental unit;
- on November 05, 2020 a Two Month Notice to End Tenancy for Landlord's Use was posted on the door of the rental unit;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by January 31, 2021;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the tenancy was ending because the landlord has entered into an agreement to sell the unit, all of the conditions of sale have been satisfied, and the purchaser has asked the landlord, in writing to give notice to end the tenancy because the purchaser or a close family member intend to occupy the unit;

- the “Buyers Notice to Seller for Vacant Possession” (which was submitted in evidence by both parties) was also posted on the door of the rental unit on November 05, 2020;
- the rental property was sold on December 12, 2020; and
- she acted on behalf of the seller in the aforementioned real estate transaction.

SD stated that:

- she and JL jointly purchased the residential property;
- she and JL live in the upper portion of the residential property;
- the property was purchased with the intent that her parents would move to the community from another province, and reside in the rental unit;
- her parents and younger brother are planning to move into the rental unit sometime this summer;
- JL’s parents plan to visit them, at which time they will stay in the lower portion of the residential property; and
- she told the Tenant that JL’s parents were planning to visit for a few months and that SD’s parents would be staying on a full time basis and would be looking for a business.

The Tenant stated that:

- she received the Two Month Notice to End Tenancy for Landlord's Use and the “Buyers Notice to Seller for Vacant Possession”;
- she received the Notice to End Tenancy and “Buyers Notice to Seller for Vacant Possession” and on November 04, 2020;
- SD told her that the purchasers’ parents were going to stay in the rental unit for a few months;
- SD never told her that SD’s parents were going to live in the unit on a full time basis; and
- It will be difficult for her to move during this COVID-19 pandemic.

### Analysis

On the basis of the undisputed evidence, I find that GW and the Tenant had a tenancy agreement.

Section 49(5) of the *Act* authorizes a landlord to end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give

notice to end the tenancy because the purchaser or a close family member of the purchaser, intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that GW sold the residential property to SD and JL, effective December 12, 2020. I therefore find that SD and JL became the Landlord's on December 12, 2020.

On the basis of the undisputed evidence, I find that SD and JL gave GW a Buyers Notice to Seller for Vacant Possession", dated November 03, 2020, in which SD and GL declare that all of the conditions of purchase and sale have been satisfied; the purchasers or close family members of the purchasers intend, in good faith, to occupy the rental unit, and that the seller should give the existing Tenant notice to end the tenancy, effective January 31, 2021.

On the basis of the undisputed evidence, I find that on November 04, 2020 or November 05, 2020 the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use, served pursuant to section 49(5) of the *Act*.

On the basis of the testimony of SD, I accept that her parents intend, in good faith, to move to this community from another province and to live in the rental unit. I find that SD's testimony throughout this hearing was direct and forthright, and I can find no reason to disregard her testimony.

I find that the testimony of SD is corroborated by the testimony of DG, who stated that one November 02, 2020 she had a conversation with SD, at which time SD told her that her parents and brother were planning to move into the rental unit.

In adjudicating this matter, I have placed little weight on the Tenant's testimony that SD told her that the purchasers' parents were going to stay in the rental unit for a few months and that SD never told her that SD's parents were going to live in the unit on a full time basis. I find that there is no evidence to corroborate the Tenant's testimony or to refute SD's testimony that she told the Tenant that JL's parents were planning to visit for a few months and that her parents would be staying on a full time basis and would be looking for a business.

I note that I had significant difficulty communicating with the Tenant during the hearing. I had difficulty understanding her submissions and I felt she had significant difficulty understanding my questions. I therefore find it entirely possible that the Tenant did not

fully understand the information provided to her by SD. I note that I did not have any difficulty understanding the submissions made by SD.

I find that the Landlord has established grounds to end this tenancy pursuant to section 49(5) of the *Act*. I therefore dismiss the Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use and I grant the Landlord's application for an Order of Possession.

### Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 28, 2021. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 08, 2021

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Residential Tenancy Branch