



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### 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 tenant applied for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the Notice), issued pursuant to section 49;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, pursuant to section 62;
- an authorization to recover the filing fee for this application, under section 72.

The applicant tenant RS (the tenant) and the respondents landlord Select Real Estate (represented by agent TK) and purchasers HR and SR attended the hearing. Landlord NG, the landlord's agent GS and the purchasers' agent HS also attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

### Preliminary Issue - Service

Landlords Select Real Estate and purchasers HR and SR confirmed receipt of the notice of hearing and that they had enough time to review it. I accept the tenant served the notice of hearing in accordance with section 89 of the Act.

The tenant affirmed he served the evidence on July 27, 2021.

Rule of Procedure 3.14 States:

Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), **documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.**  
(emphasis added)

The tenant's evidence is excluded, per Rule of Procedure 3.14.

The respondents affirmed they did not serve response evidence.

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 is compliant with the Act.

#### Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 2 month notice to end tenancy for Landlord's Use and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

#### Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?
3. If the tenant's application is dismissed, is the landlord entitled to an order of possession?

### Background and Evidence

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

The tenant and the landlord agreed the tenancy started in May 2020. Monthly rent is \$2,100.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,050.00 and a pet damage deposit of \$1,050.00 were collected and the landlord holds them in trust.

Both parties confirmed receipt of the Notice on March 27, 2021. This application was submitted on April 08, 2021. The tenant continues to occupy the rental unit.

GS affirmed the landlord sold the rental unit to HR and SR, the purchasers intend, in good faith, to occupy the rental unit and served the purchaser's notice to the seller for vacant possession.

TK confirmed receipt of the purchaser's notice to the seller for vacant possession.

The tenant affirmed he does not believe the purchasers intend to occupy the rental unit.

### Analysis

Section 49(8)(a) also allows the tenant to dispute the Notice within 15 days after the date the tenant received it. As the tenant confirmed receipt of the Notice on March 27, 2021 and submitted this application on April 08, 2021, I find the tenant disputed the Notice within the timeframe of section 49(8)(a) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid.

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,

- (d)except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
- (d.1)for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e)when given by a landlord, be in the approved form.

As a copy of the Notice was not provided, I can not confirm if the Notice is in accordance with section 52 of the Act. The landlord must submit a copy of the Notice so the arbitrator can confirm its compliance with section 52 of the Act.

Accordingly, I cancel the Notice served on March 27, 2021.

I note that I am not making any findings about the merits of the Notice.

As the tenant was successful in this application, pursuant to section 72 of the Act, I authorize the tenant to recover the \$100.00 filing fee. I order that this amount may be deducted from a future rent payment

### Conclusion

The Notice served on March 27, 2021 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenant is authorized to deduct \$100.00 from a future rent payment to recover the filing fee.

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 18, 2021

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Residential Tenancy Branch