



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 02, 2021 (the "Application"). The Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated August 22, 2021 (the "Notice").

The Tenant did not appear at the hearing. The Landlord and P.K. did appear at the hearing. I waited 10 minutes at the outset of the hearing for the Tenant to appear; however, the Tenant did not call into the hearing. I confirmed from the teleconference system that only myself, the Landlord and P.K. had called into the hearing.

The Landlord sought an Order of Possession based on the Notice. Pursuant to rule 7.3 of the Rules of Procedure (the "Rules"), I continued with the hearing.

P.K. was originally named as a landlord on the Application. Both P.K. and the Landlord advised that P.K. is not involved in the tenancy between the Landlord and Tenant. Given this, I removed P.K. from the Application and allowed P.K. to exit the hearing.

I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules. The Landlord provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant's evidence. The Landlord advised that they did not receive the hearing package or Tenant's evidence from the Tenant and that they received the hearing package from the RTB. The Landlord confirmed they were ready to proceed on the hearing date. The Landlord

confirmed there is no issue with admissibility of the Tenant's evidence because it only included the Notice and documents relating to P.K.

The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered the Notice and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

### Background and Evidence

The Landlord testified as follows. The Landlord owns a manufactured home that is separated into two suites and they rented one of the suites to the Tenant. There is a written tenancy agreement between the parties. The tenancy started December 01, 2010 and is a month-to-month tenancy. Rent is \$512.00 due on the first day of each month. The Tenant paid a \$500.00 security deposit.

The Notice was submitted as evidence. The Notice is addressed to the Tenant and relates to the rental unit. The Notice is signed and dated by an agent for the Landlord. The Notice has an effective date of October 31, 2021. The grounds for the Notice are that the rental unit will be occupied by the Landlord or a close family member. The Notice states that the rental unit will be occupied by the Landlord or the Landlord's spouse.

The Landlord testified that all four pages of the Notice were served on the Tenant in person August 22, 2021.

The Landlord testified that they are planning to move into the rental unit. The Landlord testified that they planned to move into the rental unit three months ago but will now move in when the Tenant moves out. The Landlord sought an Order of Possession effective January 31, 2022.

### Analysis

The Notice was issued pursuant to section 49(3) of the *Residential Tenancy Act* (the "Act") which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Tenant had 15 days to dispute the Notice pursuant to section 49(8)(a) of the *Act*. I accept the undisputed testimony of the Landlord that the Notice was served on the Tenant in person August 22, 2021 and note that this is confirmed by the Tenant in the Application. It appears that the Application was filed September 02, 2021, within time.

However, the Tenant did not appear at the hearing to provide a basis for the Application. Nor did the Tenant provide compelling evidence as to the basis for the Application and dispute of the Notice. Pursuant to rule 7.3 of the Rules, I dismiss the Application and dispute of the Notice without leave to re-apply.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I still must consider the grounds for the Notice because it is the Landlord who has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. I accept the affirmed testimony of the Landlord that they intend to move into the rental unit. I find the Landlord had grounds to issue the Notice and I uphold the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content.

Given the above, I issue the Landlord an Order of Possession pursuant to section 55(1) of the *Act*. The Order of Possession is effective January 31, 2022 at 1:00 p.m.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on January 31, 2022. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court 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: January 14, 2022

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Residential Tenancy Branch