



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MANZANITA VENTURES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

On March 14, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 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. P.P., T.P., and D.L. attended the hearing as owners/agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that each Landlord was served with a Notice of Hearing and evidence package by registered mail on March 22, 2022. In addition, she advised that she served the Landlords additional evidence on June 12, 2022, by registered mail. However, she did not serve her digital evidence to the Landlords.

D.L. confirmed that they received the Tenant's Notice of Hearing packages and documentary evidence with those packages. As well, she confirmed that they received the Tenant's additional evidence, that they had reviewed it, and that they were prepared to respond to it. Based on this undisputed testimony, I am satisfied that the Landlords

were sufficiently served the Notice of Hearing and evidence packages. As such, I have accepted this documentary evidence only and will consider it when rendering this Decision. As the Tenant's digital evidence was not served, this has been excluded and will not be considered when rendering this Decision.

P.P. advised that they served the Tenant with their documentary evidence by hand on June 17, 2022, and the Tenant confirmed that she received this evidence. As such, I have accepted this documentary evidence and will consider it when rendering this Decision.

All parties 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 Landlords' Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Is the Tenant entitled to recovery of 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.

All parties agreed that the tenancy started on March 15, 2019, that rent was currently established at \$900.00 per month, and that it was due on the 15<sup>th</sup> day of each month. A

security deposit of \$425.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

P.P. advised that the Tenant was served the Notice by placing it on the Tenant's doorstep on February 28, 2022. As a note, this is not a valid method in which to serve a document in accordance with Section 88 of the *Act*. Regardless, the Tenant confirmed that she received this Notice on February 28, 2022.

As another note, when a notice to end tenancy is disputed, the burden of proof is on the Landlords to prove that the notice to end tenancy is valid and to prove the reason for service of the notice. Part of that burden would include submitting a copy of the notice to end tenancy. However, in this instance, the Landlords did not submit a copy of the Notice for consideration.

When the Landlords were asked why they did not submit a copy of the Notice, P.P. stated that they did not make a copy for their own records. Apart from the obvious reasons for why they should retain a copy for their own sake, in an instance such as this, it would be clearly more difficult for them to prove the validity of the Notice if there was a dispute raised by the other party with respect to the contents contained in the Notice.

When it was brought to their attention that the Tenant submitted a copy of the Notice as documentary evidence for consideration, they advised that the Tenant did not serve them with a copy. The Tenant was then asked if she had served this to the Landlords, and she acknowledged that she had not as she did not realize she was required to do so.

At this point, as the burden was on the Landlords to prove the validity of the Notice, without them being able to provide a copy themselves, this Notice would have been cancelled in its entirety. However, the Landlords were given the opportunity to provide submissions with respect to the documentary evidence of the Notice, that was submitted by the Tenant, to determine if those documents were identical to what they served.

When I described the documents submitted before me, P.P. confirmed that I was describing the precise forms that she had served to the Tenant.

### 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 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**.

With respect to the Notice served to the Tenant, it was evident that for some reason, the Landlords used the first page of a Two Month Notice to End Tenancy for Landlord's Use of Property form (albeit an old version), and then printed off a form they found on the internet entitled "Notice To Terminate a Tenancy at the End of the Term For Landlord's or Purchaser's Own Use Form N12", and substituted this as a second page of a notice to attempt to end the Tenant's tenancy. This second page that was served was clearly not a BC Residential Tenancy Branch form, but was from some other jurisdiction, most likely Ontario.

As indicated during the hearing, the Landlords were informed that they are required by Section 52 of the *Act* to use an approved form when attempting to end a tenancy. They were advised that they cannot simply find random forms on the internet, cobble them together, and hope that those assembled documents would somehow then satisfy the requirement of the *Act* to constitute the approved form. Clearly, this collection of documents does not include all of the information contained on the approved form to inform the Tenant of all her rights under the *Act* when this type of Notice is served. It would be unfair and prejudicial to the Tenant to accept these random assembled documents as a valid notice to end tenancy.

As such, I am satisfied that the documents that the Landlords served the Tenant do not represent an approved form as required by the *Act*. Effectively, what this means is that the Tenant was never served a notice to end her tenancy.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. As such, the Tenant is permitted to withhold this amount from the next month's rent to satisfy this debt.

Conclusion

Based on the above, I am not satisfied that the Landlords ever served a valid notice to end the tenancy. As such, this tenancy continues until ended in accordance with the *Act*.

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: June 30, 2022

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Residential Tenancy Branch