



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

File #110070864: MNDCL-S, OPN, FFL

File #110072150: CNC-MT, LRE, AAT, PSF

### Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 following an agreement with the tenant to end the tenancy;
- a monetary order pursuant to s. 67 for compensation for loss or other money owed and claims the monetary order against the security deposit; and
- return of the filing fee pursuant to s. 72.

G.B. files an application pursuant to the *Act* seeking the following relief:

- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy signed on February 25, 2022 (the “One-Month Notice”);
- an order pursuant to s. 66 for more time to dispute the One-Month Notice;
- an order pursuant to s. 70 restricting the Landlord’s right of entry into the rental unit;
- an order pursuant to s. 70 that the Landlord allow access to the rental unit; and
- an order pursuant to s. 62 that the Landlord provide services or facilities.

G.B.’s application was scheduled for hearing on September 8, 2022 but was joined with the present matter and adjourned to September 20, 2022. In my interim reasons, I severed G.B.’s claims under ss. 65 and 70 such that the sole issue was related to the enforceability of the One-Month Notice.

G.R. appeared as agent for the Landlord. D.S. and K.K. appeared as agents for the Tenant, which is housing society. G.B. appeared as the occupant and was joined by his support worker T.S. and by his guest O.F..

The parties affirmed to tell the truth during the hearing.

Issues of service were canvassed on September 8, 2022 with respect to G.B.'s application. The Landlord's agent advised that she only learnt of the application on August 22, 2022 but was prepared to proceed despite late service. I am told by the Landlord's agent that the responding evidence was served on August 24, 2022, which had been acknowledged received by O.F., who lives in the rental unit with the applicant G.B.. Based on the circumstances, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

With respect to the Landlord's application, the Tenant housing society acknowledged receipt of the application and raised no objections with respect to service. I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application for the Landlord's application.

#### Preliminary Issue – G.B.'s Claim

The tenancy agreement put into evidence shows a management company as the Landlord and the housing society as the Tenant. G.B. is listed in the tenancy agreement as an occupant. As noted in my interim reasons, it was unclear to me whether G.B. is properly characterized as an occupant or a tenant.

At the September 8, 2022 hearing, I was advised by G.B.'s support worker that he lacked capacity to act on his own behalf and was under guardianship of the Public Guardian and Trustee. The matter was adjourned, in part, to permit the Public Guardian to participate in the September 20, 2022 hearing. My concern was that G.B. did not have someone to speak on his behalf in a legal capacity. Regardless of whether G.B. is a tenant under the *Act*, he is materially affected by this decision and the Public Guardian ought to be notified and, ideally, participate.

O.F. identified himself as G.B.'s agent in the application. However, I was not provided any evidence to support that O.F. was G.B.'s agent, guardian, or litigation guardian. O.F. identified himself as G.B.'s friend, guest, and that he lives in the rental unit. The Landlord and the housing both say that O.F. is an unauthorized occupant. I note the

Rule 6.8 of the Rules of Procedure requires agents to have proof of authority to act on behalf of the party. In this case, that is not present, and I am not satisfied that O.F. acts in any legal capacity for G.B..

At the outset of the September 20, 2022 hearing, I was advised that the Public Guardian had been notified of the hearing and would be attending. I accept the submissions of those present at the September 20, 2022 hearing that the Public Guardian was given notice of the hearing date, time, and call-in information. A representative for the Public Guardian did not attend. It is unclear why a representative for the Public Guardian did not attend or, at least, provide correspondence with respect to this matter. In any event, I am satisfied that G.B.'s legal representative was duly notified of this matter.

Looking at G.B.'s application, there are several issues which render it problematic. First, G.B. is named as the applicant tenant. The issue is that G.B. does not have capacity to act on his own behalf. At a basic level, a guardian or litigation guardian ought to be named on the application and that they are acting on behalf of G.B.. Second, the tenancy agreement clearly lists G.B. as an occupant of the rental unit. On its face, the contract is between the Landlord and the Tenant housing society. Further, G.B.'s mental incapacity raises serious issue on whether he has the capacity to assent to the contract. In other words, his mental incapacity may fundamentally affect whether a contract is formable between him and the Landlord.

The third issue with the application is a practical one. Even if G.B. were a tenant, the conclusive presumption under s. 47(5) of the *Act* would apply. The primary claim in G.B.'s application is to cancel the One-Month Notice and the request for more time to do so. However, s. 66(3) of the *Act* prohibits time extensions beyond the effective date of the notice. Here, the One-Month Notice was effective on March 31, 2022 and G.B.'s application was filed on May 3, 2022. In other words, I would not be permitted to grant the time extension in any event.

Fundamentally, though, I find that on the face of the tenancy agreement, G.B. is not a tenant and does not have standing to file an application under the *Act* as he is a third-party to the tenancy agreement between the Landlord and Tenant housing society. The *Act* applies and modifies the contractual relationship between landlords and tenants. Third-party occupants have no standing to seek relief under the *Act* as they are not party to the tenancy agreement. Accordingly, his application is dismissed in its entirety.

### Parties' Settlement

Pursuant to section 63 of the *Act*, I may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

The parties were advised that they were under no obligation to enter into a settlement agreement. Both parties agreed to the following settlement on all issues in dispute in this application:

1. The tenancy will end by way of mutual agreement on October 31, 2022.
2. The Landlord agrees that the mutual agreement to end the tenancy satisfies all aspects of its application.

I confirmed the settlement with the Landlord and the Tenant. Both parties confirmed having understood each term of the agreement and acknowledged it represented a full, final, and binding settlement of this dispute.

Pursuant to the settlement, I grant the Landlord an order of possession. The Tenant and any occupants shall provide vacant possession of the rental unit to the Landlord no later than **1:00 PM on October 31, 2022**. All other aspects of the Landlord's application are dismissed without leave to reapply.

It is the Landlord's obligation to serve the order of possession on the Tenant. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

Under the circumstances, I direct that the Landlord and the Tenant housing society give a copy of the decision and settlement to the Public Guardian and Trustee.

Nothing in this settlement agreement is to be construed as a limit on either parties' entitlement to compensation or other relief to which they may be entitled to under 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: September 21, 2022

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Residential Tenancy Branch