



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNDCL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords April 29, 2022 (the “Application”). The Landlords applied as follows:

- For an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 23, 2022 (the “Notice”)
- For compensation for monetary loss or other money owed

The Landlords appeared at the hearing with M.M., Legal Counsel. The Tenant appeared at the hearing with M.W., Advocate, and M.T., Legal Counsel. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties, other than Legal Counsel, provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlords’ evidence and receipt of these was confirmed by the Tenant’s representatives. No issues with service were raised when asked.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. In this decision, I will only refer to the evidence I find relevant.

### Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the Notice?
2. Are the Landlords entitled to compensation for monetary loss or other money owed?

### Background and Evidence

The Tenant and representatives testified as follows. The Tenant had a written tenancy agreement with the prior owner of the rental unit. The tenancy started in 2017 and is a month-to-month tenancy. Rent is \$800.00 per month due on the first day of each month. No security or pet damage deposits were paid.

The Landlords testified as follows. They purchased the rental unit and became the owners February 23, 2022. They were told two tenants lived in the property when they purchased it. They were told rent is \$800.00 per month for the Tenant. No security or pet damage deposits were paid by the Tenant.

The Notice was submitted. The Notice has an effective date of April 30, 2022. The grounds for the Notice are that the rental unit will be occupied by the Landlord or Landlord's spouse.

The Landlords testified that the Notice was posted to the door and put in the mailbox of the rental unit February 23, 2022. The Landlords submitted a Proof of Service signed by a witness stating the Notice was posted to the door and put in the mailbox of the rental unit on February 23, 2022.

Legal Counsel for the Tenant made the following submissions. The Tenant was out of the country until March 02, 2022. The Tenant's previous landlord told the Tenant the rental unit was sold but that the tenancy would continue. The Tenant did not find the Notice on the door of the rental unit when they returned March 02, 2022. The Tenant has a separate entrance to their suite and the Notice was not posted on that door. The Tenant found papers blowing around in the backyard March 12, 2022, which were pages one and three of the Notice. The Tenant did not know the Notice applied to them or the rental unit. The Tenant did not realize they were being told to leave the rental unit. The Tenant was not properly served with the Notice.

The Tenant confirmed their name was on the pages of the Notice they say they found in their backyard March 12, 2022.

In reply, the Landlords testified that the Notice was taped to the door of the rental unit with secure tape, and they have witnesses to support this. The Landlords testified that they also sent a text message and email to the Tenant about the Notice and the Tenant replied to these. The Landlords testified that the Tenant accepted one month's free rent

in April of 2022 as compensation for the Notice, so must have received the Notice. The Landlords clarified that they posted the Notice on the “main door” and put it in the mailbox that the Tenant collects their mail from.

In further reply, Legal Counsel for the Tenant stated that the Tenant did not understand the Notice and it was not taped to the Tenant’s door or put in the mailbox.

I asked the Tenant about receiving a text message and email from the Landlords about the Notice and the Tenant testified that they do not remember receiving these.

The Landlords sought an Order of Possession effective two weeks after service on the Tenant.

I did not ask the parties about the compensation claim and neither party mentioned it prior to the end of the hearing.

### Analysis

The relevant subsections of section 49 of the *Residential Tenancy Act* (the “Act”) state as follows:

(2) Subject to section 51...a landlord may end a tenancy

(a) for a purpose referred to in subsection (3)...by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy...

(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...

(7) A notice under this section must comply with section 52...

(8) A tenant may dispute

(a) a notice given under subsection (3)...by making an application for dispute resolution within 15 days after the date the tenant receives the notice...

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The Notice was issued pursuant to section 49(3) of the *Act*.

The Landlords were required to serve the Notice on the Tenant in accordance with section 88 of the *Act* which allows for service by posting documents to the Tenant's door or putting them in the mailbox.

The Landlords have the onus to prove service of the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I am satisfied based on the testimony of the Landlords and Proof of Service signed by a witness that the Notice was posted to the Tenant's door and put in the Tenant's mailbox February 23, 2022. There was nothing about the Landlords' testimony that caused me to question their reliability or credibility. Further, the Landlords submitted compelling documentary evidence, the Proof of Service signed by a witness, to support their testimony about service. The Landlords have proven service of the Notice in accordance with sections 88(f) and (g) of the *Act*. Pursuant to sections 90(c) and (d) of the *Act*, the Tenant is deemed to have received the Notice February 26, 2022.

Legal Counsel for the Tenant made arguments about the Tenant not being properly served with the Notice. The first argument was that the Tenant was out of the country until March 02, 2022. RTB Policy Guideline 12 deals with service and deemed service at pages 13 to 14 and states as follows:

The Supreme Court of British Columbia has determined that the deeming presumptions can be rebutted if fairness requires that that be done. For example, the Supreme Court found in *Hughes v. Pavlovic*, 2011 BCSC 990 that the deeming provisions ought not to apply in that case because Canada Post was on strike, therefore unable to deliver Registered Mail.

**A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received. For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or a travel itinerary.** It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served. (emphasis added)

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

The statements of Legal Counsel that the Tenant was out of the country are not sufficient to rebut the deeming provisions. Nor would the testimony of the Tenant alone be sufficient. If the Tenant was out of the country, I would expect to see some documentary evidence of this in order to rebut the deeming provisions. The Tenant did not submit any documentary evidence for this matter.

Legal Counsel for the Tenant argued that the Notice was not posted on the correct door. I do not find this relevant because I am satisfied the Notice was also put in the mailbox of the rental unit and therefore the Tenant is deemed to have received the Notice whether it was put on the correct door or not.

Legal Counsel argued that the Tenant did not find the Notice on their door or in their mailbox. As explained, I am satisfied the Landlords have proven service of the Notice and the Tenant is deemed to have received the Notice unless there is some compelling evidence that the Tenant did not receive the Notice. Statements of Legal Counsel are not compelling evidence that the Tenant did not receive the Notice. Nor would the testimony of the Tenant alone be compelling evidence that they did not receive the Notice.

Legal Counsel said the Tenant found two pages of the Notice in their backyard on March 12, 2022. The Tenant did not submit any further evidence to support this statement of Legal Counsel, such as a photo of the Notice showing where and when it was found or a witness statement about this. In the absence of further evidence, I do not accept that the Tenant did not find the Notice until March 12, 2022.

Legal Counsel for the Tenant argued that the Tenant did not realize the Notice applied to them when they found it March 12, 2022. I do not accept this because the Tenant acknowledged the pages of the Notice they found had their name on it. Further, the Tenant said they found pages one and three of the Notice and page one has the rental unit address on it. It is not clear how the Tenant could have received page one of the Notice and read it without realizing it applied to the Tenant and rental unit.

Legal Counsel argued that by the time the Tenant found the Notice, it was too late to dispute it. The Tenant had until March 14, 2022, to dispute the Notice because the 15<sup>th</sup> day for disputing the Notice fell on a weekend. The Tenant could have disputed the Notice after they say they found it March 12, 2022. Further, even if the Tenant was out of time to dispute the Notice, the Tenant could have sought more time to dispute the Notice pursuant to section 66(1) of the *Act*.

Really what Legal Counsel argued is that the Tenant found the Notice March 12, 2022, and did not know what they were supposed to do about it. Not knowing one's rights and obligations under the *Act* does not relieve one of those rights and obligations. Parties are expected to know their rights and obligations, particularly as they relate to notices to end tenancy which state clearly and in plain language what the rights and obligations of the parties are. The Tenant only had to read the Notice to know what they were supposed to do about it. Further, if parties do not know or understand their rights and obligations, they are expected to take reasonable steps to get assistance with these. The Tenant has not submitted any compelling evidence that they took reasonable steps on March 12, 2022, to get assistance with the Notice. Not knowing what to do about the

Notice, and not taking reasonable steps to get assistance with the Notice, does not now provide the Tenant with a basis to have the Notice cancelled.

In the circumstances, I am satisfied the Notice was served on the Tenant in accordance with the *Act* and that the Tenant is deemed to have received the Notice February 26, 2022.

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

The effective date of the Notice complies with section 49(2)(a) of the *Act*.

The Tenant did not dispute the Notice by filing an application with the RTB at any point. Given this, the Tenant is conclusively presumed to have accepted that the tenancy ended April 30, 2022. The Tenant was required to vacate the rental unit by April 30, 2022.

The Landlords are entitled to an Order of Possession pursuant to section 55(2)(b) of the *Act* and are issued an Order of Possession effective two weeks after service on the Tenant.

Given I did not hear the parties on the compensation request, and given the parties did not raise this issue or make submissions about it, this request is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

### Conclusion

The Landlords are issued an Order of Possession effective two weeks after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The request for compensation is dismissed with leave to re-apply. This decision does not extend any time limits set out in 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 *Act*.

Dated: September 01, 2022

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Residential Tenancy Branch