



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HARRON INVESTMENTS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPN, FFL

### Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under a Notice to End Tenancy given by the Tenant pursuant to section 55; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord's representative RS, the Landlord's advocate LM, the Landlord's property manager TF, the Tenant, and the Tenant's daughter SC attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

### Preliminary Matter – Service of Dispute Resolution Documents

LM confirmed that the notice of dispute resolution proceeding package and the Landlord's evidence (collectively, the "NDRP Packages") were sent to the Tenant via registered mail in two packages. The Landlord submitted registered mail tracking numbers in support (referenced on the cover page of this decision). Tracking records indicate that the packages were delivered on September 13, 2022 and December 3, 2022. I find the Tenant was served with the NDRP Packages in accordance with sections 88(c) and 89(2)(b) of the Act.

SC acknowledged that the Tenant's documentary evidence submitted to the Residential Tenancy Branch was not served on the Landlord.

Rule 3.15 of the Rules of Procedure states that the respondent (in this case the Tenant) must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and must be received by the applicant "not less than seven days before the hearing". Rule 3.16 of the Rules of Procedure states that at the hearing, "the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with their evidence as required by the Act and these Rules of Procedure". Since the Tenant did not serve a copy of her documentary evidence on the Landlord, I find that it would be procedurally unfair to consider such evidence. As such, I exclude the Tenant's documentary evidence from consideration for the purpose of this hearing.

#### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on February 1, 2011 with a previous landlord and was a month-to-month tenancy. A copy of the tenancy agreement has been submitted into evidence.

The rental unit is part of a multi-unit building which was purchased by the Landlord several years ago.

LM made the following submissions on behalf of the Landlord:

- On June 7, 2022, RS and TF had attended at the rental unit to discuss with the Tenant regarding a possible breach of the tenancy agreement.
- There was another woman sitting on the sofa. The Tenant indicated that she was the Tenant's daughter.

- The Tenant talked about possibly moving and that the rental unit is too small. When RS asked the Tenant how much time she needed, the Tenant said one month, but mentioned that she might want to move out sooner and would like to sign a move-out notice. The Tenant agreed to sign a handwritten notice (the “Notice”) confirming her intention to vacate the rental unit.

A copy of the Notice has been submitted into evidence. The Notice states as follows (portions redacted for privacy):

[rental unit address]	
Give notice to move out by	
July 31, 2022	
[Tenant signature]	
	June 7, 2022
[Tenant name]	[Signature of TF]

LM further submitted that on June 17, 2022, TF received a handwritten letter (the “June 17, 2022 Letter”) from the Tenant which states as follows (portions redacted for privacy):

June 17/22
To whom it may concern,
I [Tenant name] of apartment [number] are not allowing any persons to enter my apartment on June 20 as I did not give my notice to vacate.
Thank - you [Tenant signature]

LM submitted that it does not appear this letter was written by the Tenant, although it contains the Tenant's signature.

LM submitted that from the Landlord's perspective, the Tenant gave legal notice to end tenancy by signing the Notice. LM submitted that the Landlord took action to re-rent the rental unit and had started accepting applications from potential tenants. LM referred to a letter from a potential tenant submitted into evidence.

RS testified that when he and TF entered the rental unit on June 7, 2022, the Tenant was quite friendly and happy that day, and the Tenant told them she wanted to move into a more spacious unit. According to RS, the Tenant said she wanted to move out July 31, 2022 or sooner. RS testified that the Notice was written by TF. RS testified that he and TF read the Notice over to the Tenant twice, and they both witnessed the Tenant sign the Notice. RS stated that after the Tenant signed the Notice, TF also signed. RS testified that the Tenant had voluntarily signed the Notice.

RS testified that during this time, he, TF, and the Tenant were near the hallway or kitchen area, and a woman identified by the Tenant as the Tenant's daughter sat on the sofa. RS testified that the Landlord subsequently arranged two showings of the rental unit to potential tenants.

TF also testified that the Tenant had voluntarily signed the Notice. TF stated that she and RS had asked the Tenant if the Tenant would like to sign the Notice to move out. TF confirmed that she also signed the Notice as a witness. TF testified that afterwards, she tried to do a showing with a prospective tenant, but it was cancelled.

LM argued that the Tenant waited ten days after signing the Notice before unilaterally requesting not to move out of the rental unit on June 17, 2022. LM argued that the Tenant cannot unilaterally cancel the Notice.

LM argued that the legislation is clear regarding the ways a tenancy can end, one of which is a tenant giving notice. LM argued that the Tenant had talked about moving out even earlier so she was aware of options. LM emphasized that there was a 10-day gap between when the Tenant signed the Notice and when the Landlord was informed that the Tenant would not allow the showings. LM submitted that the situation is one of buyer's remorse on the part of the Tenant.

LM stated that the Landlord is prepared to be accommodating and to give the Tenant a reasonable period of one or two months to vacate the rental unit. LM explained that the Landlord's potential tenant would also be required give notice to move from their current residence.

SC stated that RS and TF came to the rental unit for an inspection and mentioned that the drapes and carpets needed to be redone. SC stated that RS and TF said they would give the Tenant one month and signed the Tenant's name on the documents. SC stated that the Tenant called her in the morning on June 7, 2022 and SC knew there would be an inspection so she told the Tenant not sign anything. SC stated that she does all of the paperwork for the Tenant as well as SC's sister.

SC acknowledged that she was not at the rental unit on June 7, 2022. SC confirmed the Tenant had been with the Tenant's other daughter, SC's sister, who has since passed away. SC stated that her sister had a physical disability and was the person sitting on the couch in the rental unit on June 7, 2022.

SC stated that RS grabbed the Tenant's arm and told the Tenant to sign papers. SC denied that the Tenant had signed anything. SC indicated that the signature on the Notice has the Tenant's last name spelled incorrectly. SC stated that the Tenant is almost 90 years old but knows how to spell her own last name. SC also alleged that RS told TF to sign for the Tenant on the Notice.

SC testified that the Tenant was planning on moving, but not right away as the Tenant cannot afford to do so. SC testified she cannot afford to take in the Tenant right now.

SC indicated that she received advice from "arbitration" to refuse the Landlord's showings of the rental unit. SC testified that she called the Landlord the same day the Tenant received the Notice to tell them the Tenant didn't sign it. SC stated she tried to speak with TF over the phone and TF had hung up on her three times.

The Tenant testified that she "did not sign any papers at all". The Tenant stated "they came to the door" and "were looking for mice or something". The Tenant stated she "let them in", and "three minutes... they asked me one question, I was looking for a bigger place but I didn't give them my notice. I said I'll give you a month's notice when I am ready to move." The Tenant stated: "they were here three minutes and they gave ME a month's notice". Upon further questioning, the Tenant specifically denied that she had signed the Notice or that it was her signature on the Notice.

SC stated she visited the Tenant every day and that there was “no way” the Tenant would give any notice, especially with SC’s sister sick at the time. SC argued that the Landlord wants the Tenant out for more money or to renovate the rental unit. SC argued that the Tenant should be able to stay as the Tenant did not give her notice.

SC stated that the Tenant was being harassed by the Landlord as the Landlord would not stop calling the Tenant or bothering the Tenant at her door. According to SC, on one occasion RS pushed the door open, grabbed the Tenant’s arm, told her she had signed the Notice, and left a bruise on the Tenant’s arm. SC stated that she called the police. SC stated there was a witness, a neighbour. SC testified that this happened after the Landlord had tried to come in to see the rental unit and the Tenant said no, which was sometime after June 7, 2022. Upon questioning, SC acknowledged that she did not personally witness this incident.

RS denied that he had ever touched the Tenant or any tenant. RS stated that the incident mentioned by SC is “completely fabricated”. RS testified that TF is always with him when he visits the rental property. RS stated that he and TF have always been polite and courteous to the Tenant, and vice versa. RS testified that on June 7, 2022, he and TF did not mention anything about the carpets or curtains.

LM testified that SC had left voicemails to TF which were “indecipherable”. LM testified he listened to some of the voicemails and there was no indication that they were to cancel the Notice.

### Analysis

#### *1. Is the Landlord entitled to an Order of Possession?*

Sections 45(1) and (4) of the Act state:

#### **Tenant's notice**

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is 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.

[...]

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the Act states:

**Form and content of notice to end tenancy**

52 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.

I find the Tenant and SC's evidence to be that the Tenant did not sign the Notice and that the signature on the Notice was not made by the Tenant. I find SC to allege that the Tenant's signature on the Notice was made by TF at RS's request and the signed Notice was then given to the Tenant.

I find the circumstances of this case to be unusual because it is not disputed that the Tenant had not written the Notice herself. I also note that according to the Landlord, the Tenant had signed the Notice at the rental unit while RS and TF were visiting for a different purpose on June 7, 2022.

However, I do not find the Tenant or SC to have given any testimony which could be interpreted as arguments relating to consent, duress, undue influence, unconscionability, or capacity. For example, I do not find the Tenant or SC to say that the Tenant had signed the Notice under pressure from RS or TF, had signed the Notice without knowing the contents or had misunderstood the contents, or lacked capacity to sign legal documents generally. I note SC testified that she does the Tenant's paperwork for the Tenant. However, I find there is insufficient evidence to suggest that the Tenant would not have understood the contents of the Notice. Based on the evidence presented, I am unable to find that the Tenant did not have the capacity to

sign a legal document on her own if she had wished to do so. Rather, I find the Tenant and SC's evidence is simply that the Tenant's signature on the Notice is a forgery.

Therefore, I find the key issue to be one of credibility, that is, whether the Tenant did in fact sign the Notice. The Court in *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174 (as cited in *Bray Holdings Ltd. v Black*, 2000 BCSC 738 at para. 24) states:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In this case, I find on a balance of probabilities that the Tenant had signed the Notice on June 7, 2022 at the rental unit. I accept RS and TF's testimonies that they both witnessed the Tenant sign the Notice after they read it over to her, and that TF then signed as a witness. I find SC acknowledged that the Tenant was planning on moving. I find if the Tenant had not signed the Notice, it would not make sense for the Tenant to later send the June 17, 2022 Letter to the Landlord denying that she had given a notice to vacate. I find the June 17, 2022 Letter also makes no mention of an alleged forgery. I find this to be highly unusual given the seriousness of the allegation.

I note SC's comments about the Tenant's signature on the Notice. I have compared this signature with the Tenant's signature on the tenancy agreement, which I note was signed many years ago. I find that without any evidence from an expert in handwriting analysis, I do not find the comparison to be helpful for deciding this matter.

Based on the foregoing, I conclude that the Tenant did sign the Notice on June 7, 2022. As mentioned, I also find there is insufficient evidence to suggest that the Tenant did not voluntarily sign the Notice or lacked capacity to do so.

I find the Notice to comply with the requirements of section 52 of the Act. The Notice states the address of the rental unit, the date it was signed, and gives July 31, 2022 as the effective date.



I find that the parties' tenancy was on a month-to-month basis, and by signing the Notice, the Tenant gave notice to end the tenancy by July 31, 2022 in accordance with section 45(1) of the Act.

Furthermore, I find the Landlord did not agree for the Tenant to withdraw the Notice and that the Tenant may not unilaterally withdraw it.

Residential Tenancy Policy Guideline 11. Amendment and Withdrawal of a Notice to End Tenancy states:

**C. WITHDRAWAL OF NOTICE TO END TENANCY**

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

Section 55(2)(a) of the Act states:

**Order of possession for the landlord**

**55 [...]**

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

Having found the Notice to be a valid notice to end tenancy under sections 45(1) and 52, I conclude the Landlord is entitled to an Order of Possession under section 55(2)(a) of the Act.

Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession states:

**B. DETERMINING THE EFFECTIVE DATE OF AN ORDER OF POSSESSION**

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
  - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
  - e.g., If the tenant provides evidence of a disability or a chronic health condition.

An arbitrator may also canvas the parties at the hearing to determine whether the landlord and tenant can agree on an effective date for the order of possession. If there is a date both parties can agree to, then the arbitrator may issue an order of possession using the mutually agreed upon effective date.

Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

I find the Landlord is willing to accommodate the Tenant by giving the Tenant an additional month or two to find a new residence. As such and pursuant to section 55(2)(a) of the Act, I grant the Landlord an Order of Possession effective 1:00 pm on February 28, 2023.

## *2. Is the Landlord entitled to recover the filing fee?*

The Landlord has been successful in this application. I grant the Landlord recovery of the filing fee under section 72(1) of the Act.

## Conclusion

The Landlord's claims for an Order of Possession and to recover the filing fee are successful.

Pursuant to section 55(2)(a) of the Act, I grant an Order of Possession to the Landlord effective **February 28, 2023 at 1:00 pm**. The Tenant must be served with this Order as

soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain \$100.00 from the Tenant's security deposit on account of the filing fee awarded in this decision. The balance of the Tenant's security deposit must be dealt in accordance with the Act, the regulations, and the tenancy agreement.

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: January 19, 2023

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Residential Tenancy Branch