



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 0868732 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPM

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The applicant applied for an order of possession under a mutual agreement to end a tenancy, pursuant to sections 44 and 55.

The applicant, represented by agents TL, MK and WE, and respondent IC attended the hearing. IC was assisted by agent GC. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

### Preliminary Issue – Named Applicant

The application lists applicant landlord TL.

TL, MK and WE affirmed that the landlord is the numbered company 0868732 BC LTD (the numbered company), and they represented the numbered company, which owns the Manufactured Home Park where the rental unit is located. IC stated she does not know who the landlord is.

Pursuant to section 64(3)(a) of the Act, I have amended the application to list applicant the numbered company.

#### Preliminary Issue – Jurisdiction

Both parties agreed IC rents a manufactured home and the site where the manufactured home is located.

TL landlord testified the ongoing tenancy started on April 29, 2021. Monthly rent in the amount of \$1,000.00 is due on the first day of the month. The numbered company did not collect a security or a pet damage deposit.

The tenant said the ongoing tenancy started on January 01, 2021. Monthly rent in the amount of \$1,016.00 is due on the first day of the month. The numbered company collected a security deposit in the amount of \$4,000.00.

TL affirmed that SN was an agent for the numbered company. IC and SN signed a tenancy agreement on January 08, 2021 (the tenancy agreement). It states:

#### MANUFACTURED HOME SITE TENANCY AGREEMENT CRIME FREE ADDENDUM

1. The Landlord and Tenant have entered into a Manufactured Home Site Tenancy Agreement.
2. The Tenant is responsible for the conduct of any occupants, guests or other persons allowed in to the Park by the Tenant.
3. The Landlord and Tenant agree that the Tenant shall not engage in nor permit any illegal activity on the Site or anywhere in the Park, including but not limited to:
  - a) any drug-related illegal activity, including the smoking of marijuana,
  - b) solicitation of or by sex trade workers or related nuisance activity,
  - c) street or other criminal gang activity,
  - d) assault or threatened assault,
  - e) unlawful possession or use of a firearm,
  - f) any illegal activity that has or is likely to threaten the physical well-being, safety, security, quiet enjoyment or lawful rights of other occupants of the Park or the Landlord.

4. Any violation of the provisions of this Addendum shall be deemed a violation of section 40(1)(d) of the Manufactured Home Park Tenancy Act and a breach of a material term of the Tenancy Agreement between the parties. It is understood and agreed that such violation shall be cause for the Landlord to issue a Notice to End Tenancy. Unless otherwise required by law, proof of violation shall not require arrest, charge or conviction, but shall be predominant of the evidence.

[...]

Agreed and signed by each adult tenant: IC signature

Agreed and signed by the landlord: SN signature

Address of site: [the rental unit's address]

IC and SN signed a document on April on April 29, 2021 (the option agreement). It states:

OPTION TO PURCHASE AGREEMENT  
BETWEEN

[the numbered company], herein called the "Optionor", who owns Trailer at [the rental unit's address], called "the Property";

AND

[the tenant], herein called the "Optionee", who lives at [the rental unit's address]

IN CONSIDERATION of the Optionee meeting all obligations as stated herein, the Optionor hereby grants the Optionee an Option to Purchase the Property under following terms:

The Option price of the Property is \$22,200.00 (Twenty Two thousand Two hundred Canadian dollars) as of Apr 1, 2021.

Commencing on Apr 1, 2021, the Optionee shall have the Option to purchase the Trailer (The Property) at any time while renting the Property under this Option to Purchase agreement and a valid Residential Tenancy Agreement. This Option interest is not transferable or assignable and can be exercised only by the Optionee signing this Tenant's Purchase Option unless the Optionor agrees in writing.

1. The Optionee is a residential tenant of the Optionor. While the Optionee is renting the Property under a valid Residential Tenancy Agreement (as attached), the Optionee has a right to improve the property value at Optionee's own costs.
2. Non Refundable Option Consideration: The Optionee paid the sum of \$3,000.00 (Three thousand dollars) as a non-refundable Option consideration to lock in the trailer future price when both Parties sign this Option to Purchase Agreement. (Paid on Jan 11, 2021). The Option consideration shall be applied toward the purchase price of the Property, if, and only if, the Optionee exercises this Option to Purchase. In the event that the Optionee fails to exercise the Option to Purchase or defaults under any terms of the attached Residential Tenancy Agreement, this Option to

Purchase shall be null and void and the Non-Refundable Option Consideration will be retained by the Optionor as liquidated damages and not as a penalty.

3. Credit toward Principle: The Optionee shall pay rent of \$1,000.00 per month. In the event the Optionee exercises this Option to Purchase under a valid Residential Tenancy Agreement, the Optioner will contribute \$200 out of the monthly rent payment (\$1,000.00) as credit toward the Optionee's purchase price. All covenants of said Residential Tenancy Agreement must have been faithfully performed in order for this Option to Purchase to be valid and enforceable, including but not limited to, the repairs, maintenance and upkeep of said Property.

[...]

Signed this 29 day of April, 2021, by the Optioner OR Optioner's agent:

Signature: IC

Optioner's or Agent's Name: SN

Signed this 29 day of April, 2021, by the Optionee:

Optionee's signature: [blank]

IC stated that she only signed the option agreement with the numbered company, represented by SN.

TL testified the parties have a tenancy agreement under the Act and the \$3,000.00 paid by IC is not a security deposit, but a deposit to lock in the property price, as stated in clause 3 of the option agreement.

Section 2 of the Act states: "Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property."

Section 4 of the Manufactured Home Park Tenancy Act (the Manufactured Home Act) states:

This Act does not apply with respect to any of the following:

- (a) a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant;
- (b) prescribed tenancy agreements, manufactured home sites or manufactured home parks.

The landlord said the parties signed a mutual agreement to end tenancy (RTB form 8), hereinafter the mutual agreement, on July 19, 2022. The mutual agreement, submitted into evidence, indicates the tenant will vacate the rental unit on July 31, 2022 at 11:59 PM.

The mutual agreement addendum states:

3. Both the Landlord and the Tenant agree that the Landlord will return the non-refundable \$3,000.00 deposit to the Tenant in exchange for the Tenant to move out peacefully. There is no other credit from the Landlord to the Tenant as all the Tenant paid monthly is the exact amount of the monthly rent.

5. The Tenancy Agreement, the Option To Purchase agreement and the Park Rules signed on April 29th, 2021, will be invalid after the Mutual Agreement to End a Tenancy #RTB-8 and this addendum is signed and the \$3,000.00 is paid to the tenant by the Landlord. The \$3,000.00 shall be paid to the tenant after the tenant moved out of the trailer and cleaned it up.

Residential Tenancy Branch Policy Guideline 27 states:

A tenancy agreement transfers a landlord's right of possession to a tenant. It does not transfer an ownership interest. If a dispute concerns the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, the director may consider whether

- money exchanged was rent or was applied to a purchase price;
- the agreement transferred an interest greater than the right of possession;
- there was a right to purchase in the tenancy agreement and whether it was exercised.

Based on the tenancy agreement and the undisputed testimony, I find the numbered company and IC signed a tenancy agreement under the Act, per section 2 of the Act and 4(a) of the Manufactured Home Act.

Based on the option agreement and the mutual agreement, I find that IC signed the option agreement with the numbered company's representative SN. I find the option agreement did not end the tenancy agreement and the parties continued to have a tenancy agreement under the Act, as IC continues to occupy the rental unit and pay rent. Furthermore, the tenant did not indicate that she exercised the right to purchase the manufactured home (clause 2 of the option agreement).

Hereinafter, I will refer to the numbered company, represented by agent TL, as the landlord and IC as the tenant.

### Issue to be Decided

Is the landlord entitled to an order of possession?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

The tenant affirmed that she signed the mutual agreement, but she did not understand what she signed. The tenant stated she does not remember if she read the mutual agreement, as she was very ill when she signed it. The tenant does not remember if she could understand the mutual agreement document.

The landlord testified the tenant was able to understand the mutual agreement when she signed it.

### Analysis

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Section 44(1) of the Act states:

A tenancy ends only if one or more of the following applies:  
(c) the landlord and tenant agree in writing to end the tenancy;

Section 55(2) of the Act states:

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:  
(d) the landlord and tenant have agreed in writing that the tenancy is ended.

I find the tenant's testimony about not being able to understand the mutual agreement vague and non-convincing.

Based on the mutual agreement, I find the parties agreed to end the tenancy on July 31, 2022, per section 44(1)(c) of the Act.

As the tenant continued to occupy the rental unit past July 31, 2022, I issue the landlord an order of possession, per section 55(2)(d) of the Act.

Residential Tenancy Branch Policy Guideline 54 provides the arbitrator may extend the effective date of an order of possession:

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.

Considering that the tenant has been occupying the rental unit since 2021, I find it reasonable to extend the effective date of the order of possession to ten calendar days after service on the tenant.

I warn the tenant that she may be liable for any costs the landlord incurs to enforce the order of possession.

### Conclusion

Pursuant to section 55(2)(d) of the Act, I grant an order of possession to the landlord effective ten calendar days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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: March 03, 2023

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Residential Tenancy Branch