



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 28N77E HOLDINGS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPL, OPM, FFL

### Introduction

The Landlord filed their Application on May 24, 2023 seeking an Order of Possession in line with a mutual agreement to end tenancy. They also seek reimbursement of the Application filing fee.

The Landlord amended their Application on August 25, 2023, seeking an order of possession in line with a subsequent Two-Month Notice to End Tenancy for Landlord's Use they served to the Tenant on August 23, 2023.

The matter proceeded to a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on September 15, 2023. The Landlord and the Tenant both attended the hearing. I explained the process and provided each participant the opportunity to ask questions.

### Preliminary Matter –Landlord's service of amendment and evidence

At the outset of the hearing the Tenant stated they did not know about the Landlord's amendment to their Application. In the week prior to this hearing the Tenant had filed their own application to dispute the Two-Month Notice to End Tenancy for Landlord's Use.

The Landlord filed this amendment on August 25. On that day the Residential Tenancy Branch responded to the Landlord's amendment, providing an email to the Landlord at 11:33am. This contains the instruction to the Landlord: "You must also serve an identical copy of your request(s) for amendment and any supporting evidence to the other party."

The *Residential Tenancy Branch Rules of Procedure* are in place for this hearing process, to ensure a fair, efficient, and consistent process for resolving disputes. Rule 4.6 specifies that a

copy of the form for amendment must be produced and served upon each respondent, and an applicant must be prepared to show this to the arbitrator.

I find the Landlord did not serve any documentation to the Tenant about their amendment to their original Application. I omit that amendment and the issues surrounding it from consideration in this present hearing. I dismiss the Landlord's amendment – that is, for an order of possession in line with the Two-Month Notice – with leave to reapply.

The *Residential Tenancy Branch Rules of Procedure* also set the timeline of 14 days prior to the scheduled hearing date for the applicant to serve their evidence and provide that evidence to the Residential Tenancy Branch. This is where an applicant cannot serve their evidence to the respondent at the time of application and when the Notice of Dispute Resolution Proceeding is provided by the Residential Tenancy Branch.

The Landlord here provided evidence 7 days in advance, and then 2 days in advance of the scheduled hearing. This evidence concerns the Two-Month Notice. The Tenant in the hearing confirmed they received evidence from the Landlord two days prior to the scheduled hearing.

As above, given that I have dismissed the Landlord's amendment to their application for an order of possession in line with the Two-Month Notice, I exclude this evidence from consideration.

The issues in this hearing are set out below.

#### Issues to be Decided

Is the Landlord entitled to an Order of Possession in line with a Mutual Agreement to End Tenancy, pursuant to s. 48 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

#### Background and Evidence

In their evidence, the Landlord and Tenant both provided a copy of the tenancy agreement that was in place between the parties, starting on June 1, 2022. This was set to be a one-year

fixed term tenancy that would end on May 31, 2023. The agreement does not have a check mark in place to indicate either section 2, part D or E apply; however, the reason the Tenant must vacate at the end of the tenancy is provided as “mutually agreed”, and the Landlord and 2 Tenants initialled in the required area.

The final page of the agreement bears the parties’ signatures, dated May 17, 2022.

The Tenant on September 9 prior to the hearing provided a copy of the prior agreement as evidence. This does show a prior one-year fixed-term tenancy to May 31, 2022, with section 2, part E indicated (*i.e.*, “At the end of this time, the tenancy is ended and the tenant must vacate the rental unit.”). The Landlord and two Tenants initialled the required space, and the parties had signed that agreement jointly on May 16, 2021.

In the hearing, the Landlord set out that they bought the rental unit property two years prior, with the intent of their own child moving into the rental unit. This was the reason they did a single-year fixed-term with the Tenant. The Landlord described asking the Tenant to move in 2022; however, the Tenant encouraged the Landlord to “do the proper route”, so the Landlord agreed to an extra year. The Landlord explained this as proof, from their understanding, that the Tenant was aware of the fixed-term nature of this tenancy, and the requirement that they would have to move out at the end.

The Landlord set out that the Tenant “[has] assumed the Landlord was seeking new tenants at a higher amount of rent”. After the Landlord filed this Application on May 24 and notified the Tenant of this pending hearing, the Landlord had to make other arrangements, and they are now selling the rental unit property. According to the Landlord, the Tenant was aware of the pending sale, with the new owners ready to move into the rental unit approximately two months after the scheduled hearing date.

In response to what the Landlord described in the hearing, the Tenant stated they were not told about the Landlord’s own child needing the rental unit. In addition, they were then quickly told a different reason when the Landlord informed them of the pending sale of the rental unit property.

The Landlord reiterated that they had to accept an offer for purchase of the rental unit property as quickly as possible, with the closing date being November 1.

Aside from the more immediate matters of the pending sale, the Landlord presented that the parties signed a Mutual Agreement to End Tenancy on the date they signed the second fixed-term tenancy agreement, on May 17, 2022.

The Landlord presented this Mutual Agreement to End Tenancy form, as completed, in their evidence. This shows the end-of-tenancy date by which “The tenant(s) agrees to vacate the [rental unit] at” 12:00pm on May 31, 2023.

The Tenant acknowledged signing this mutual agreement document. The Tenant submitted this was a way for the Landlord to circumvent the law, by having a guaranteed end to this tenancy in place, thereby being able to re-rent to newer tenants for a higher rent. The Tenant pointed to the Landlord continuing to accept rent past May 31, 2023, with only one receipt provided to them that indicated “for use and occupancy only”, pointing to a reinstatement of the tenancy on that basis.

The Landlord reiterated that they established everything in the agreement mutually, including its end.

### Analysis

The *Act* s. 5 provides that it cannot be avoided:

- (1) Landlords and tenants may not avoid or contract out of this act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

The Tenant in the hearing made a statement that the Landlord was avoiding the *Act* by having a set end-of-tenancy date in place in the agreement, and with a Mutual Agreement to End Tenancy in place. I find this is speculative on the Tenant’s part, and there was no evidence or a recall by the Tenant of other statements made by the Landlord about ending the tenancy for that reason. I find it unlikely that the Landlord made hints of this nature to the Tenant, even in passing.

The *Act* provides for an ending of a tenancy in s. 44:

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

I find the *Act* allows for a tenancy to end in this manner; therefore, with respect to the Mutual Agreement to End Tenancy signed by the parties on May 17, 2022, I find the Landlord is not in any other way avoiding or contracting out of the *Act*. I find the Landlord’s explanation on their

family's plan and design to have the rental unit available to their child when that child came of age is plausible.

Additionally, there is nothing present in the existing tenancy agreement, barring or otherwise contradicting the *Act*; paragraph 14 in the tenancy agreement states: "The landlord and tenant may mutually agree in writing to end this Agreement at anytime."

The Tenant did not otherwise challenge the Mutual Agreement to End Tenancy prior to the set end-of-tenancy date. Instead, they have been overholding after that agreed-to date. According to the Landlord, this forced their sale of the rental unit property, prompting an end-of-tenancy notice served for a different reason entirely.

Though the Tenant postulated that the tenancy was reinstated by the Landlord's omission of a 'use and occupancy' statement on rent receipts, I find the principle of estoppel applies, by way of both the Landlord actually providing that brief on the first receipt they issued, and the fact that a Mutual End of Tenancy Agreement document was in place and not otherwise cancelled legally or by any other statement by the Landlord.

The tenancy agreement and the Mutual Agreement to End Tenancy are consistent in providing that the tenancy would end on May 31, 2023. The agreement specified that the tenancy would end by way of agreement. The Tenant otherwise did not present that they signed either the tenancy agreement, or the Mutual Agreement, or both, under duress. I find this was not a situation where the Landlord unduly influenced the procedure of having an agreement in place, and the Mutual Agreement to End Tenancy is not otherwise voided for that reason.

The *Act* s. 55(2)(d) provides that a landlord may request an order of possession in the circumstances where a landlord and tenant have agreed in writing that the tenancy is ended. As per s. 55(3), an arbitrator may grant an order of possession after the date when a tenant is required to vacate a manufactured home site, and the order takes effect on the date specified in the order.

I find as fact that the Landlord and Tenant completed a Mutual Agreement to End a Tenancy on May 17, 2022. The set end-of-tenancy date was May 31, 2023. Based on this document that bears both parties' signature as proof of the fact that the tenancy has ended on mutual agreement, I grant an Order of Possession, as per s. 55 of the *Act*, to the Landlord.

As the Landlord was successful in their Application, I find the Landlord is entitled to recover the \$100 Application filing fee. I order the Landlord to retain \$100 from the Tenant's security deposit amount of \$1,550, in full satisfaction of the monetary award for the filing fee. The

remainder of the Tenant's security deposit shall be dispensed at the end of this tenancy in accordance with s. 38 of the *Act*.

Conclusion

For the reasons above, I grant an Order of Possession to the landlords effective 1:00 p.m. on October 31, 2023. The Landlord must serve this Order of Possession on the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia, where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 20, 2023

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Residential Tenancy Branch