



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      CNC, OLC,FFT  
                             CNL-MT, CNOP, FFT

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (Application #1) under the *Residential Tenancy Act* (the "Act") filed on August 21, 2023, for:

- cancellation of the landlords' One Month Notice to End Tenancy for Cause (the One Month Notice) issued under section 47 of the Act;
- an order for the landlord to comply with the Act, regulation, or tenancy agreement; and
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act.

This hearing also dealt with tenant's Application (Application #1) under the Act filed on October 30, 2023, for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) under section 49 of the Act;
- an extension to the time period set out under section 49(5) of the Act for disputing the Two Month Notice; and
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act.

Tenant K.D.S.M. attended the hearing for the tenant.

Agent H.L. and their witnesses Y.L. and Z.Z. attended the hearing for the landlord.

## **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

At the original hearing on November 24, 2023, the agent acknowledged service of the Proceeding Package for Application #1 and raised no concerns regarding service. I therefore found the landlord duly served with the Proceeding Package for Application #1 in accordance with the Act. However, there was a dispute between the parties regarding service of the Proceeding Package for Application #2. As the original hearing was adjourned due to time constraints, I permitted the parties to submit additional documentary evidence during the adjournment in relation to service of the Proceeding Package for Application #2, or the lack thereof.

The tenant submitted a receipt in the amount of \$2.04 from a Canada Post location. The receipt shows that on November 3, 2023, a "COIL" in the amount of \$1.94, plus tax, was purchased. The tenant stated that although they requested that registered mail be sent, the employee did not send registered mail. I also note that the purchase appears to be for a single stamp off of a stamp coil, and that the amount charged matches the current rate for purchase of a single stamp for an oversized envelope mailed within Canada.

Based on the above, I am not satisfied that the Proceeding Package for Application #2 was sent by registered mail, and although it may well have been sent by regular mail, no proof was submitted that the stamp purchased was used for this purpose and the agent denied receipt of the Proceeding Package for Application #2 by either the landlord or themselves.

Based on the above, I am not satisfied that the Notice of Dispute Resolution Proceeding (NODRP), which forms part of the Proceeding Package, was served as required by section 59(1) of the Act and rule 3.1 of the Rules. I therefore dismiss Application #2 without leave to reapply, as the effective date and the time period for disputing the Two Month Notice have passed.

## **Preliminary Matters**

Rule 2.3 of the Rules states that if, during the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss unrelated disputes contained in a single application with or without leave to reapply.

In Application #1 the tenant sought cancellation of a One Month Notice issued under section 47 of the Act. As I was satisfied that validity and enforceability of the One Month Notice was not related to the matters claimed by the tenant in their application for an

order for the landlord to comply with the Act, regulation, or tenancy agreement, I therefore dismissed it with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

### **Issues to be Decided**

Is the tenant entitled to cancellation of the One Month Notice?

Is the landlord entitled to an Order of Possession?

Is the tenant entitled to recovery of either filing fee?

### **Background and Evidence**

The tenant acknowledged receipt of the One Month Notice. However, the parties disagreed about whether the copy served on the tenant was signed, and therefore whether it complied with section 52 of the Act.

Both parties provided me with a copy of the One Month Notice. The tenant's copy was unsigned. The landlord's copy was signed.

### **Analysis**

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party bearing the burden of proof must provide sufficient evidence over and above their testimony to establish their claim. When a tenant disputes a notice to end tenancy, the burden of proof falls to the landlord to establish validity and enforceability of the notice. As a result, I find that the landlord bears the burden of proof with regards to both validity and enforceability of the One Month Notice.

#### **Is the tenant entitled to cancellation of the One Month Notice?**

The parties disputed whether the One Month Notice served on the tenant was signed, and as set out above, I find that the landlord bears the burden to prove that it was. Both parties submitted copies. The landlord's copy was signed and the tenant's copy was unsigned.

Both copies of the One Month Notice are dated August 17, 2023, and the tenant's unsigned copy was submitted to the Branch on August 23, 2023. It is on the approved Branch form and appears unaltered. Although the landlord's copy is signed, it was not submitted to the Branch until November 7, 2023. As a result, I find that it could have been signed by the landlord or their agent any time after it was sent to the tenant by

registered mail on August 17, 2023, and the date it was submitted to the Branch, almost three months later. There is no corroboratory evidence before me from the landlord, such as video evidence or witness statements or testimony, to demonstrate to my satisfaction that not only was the copy of the One Month Notice sent to the tenant on April 17, 2023, signed, but that it is a true copy of the one now before me from the landlord. Further to this, the tenant denied receipt of a signed copy and the unsigned copy submitted for my consideration by the tenant on April 23, 2023, appears to be unaltered.

As a result of the above, I find that the landlord has failed to satisfy me on a balance of probabilities that a signed copy was served. Section 52(a) of the Act requires that notices to end tenancy be signed. Section 47(3) of the Act states that One Month Notices must comply with section 52 of the Act. As I am not satisfied that the One Month Notice served on the tenant was signed, I find it does not comply with either section 47(3) of the Act or section 52(a) of the Act. I therefore find it unenforceable, as section 55(1)(a) of the Act also requires that notices to end tenancy for which an order of possession is being granted comply with section 52 of the Act.

The tenant's Application seeking cancellation of the One Month Notice is granted and I order that the One Month Notice dated April 17, 2023, is cancelled and of no force or effect.

### **Is the landlord entitled to an Order of Possession?**

Despite cancellation of the One Month Notice, I have already dismissed the tenant's Application seeking cancellation of the Two Month Notice. Section 55(1) of the Act states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52, and during the dispute resolution proceeding, the tenant's application is dismissed or the landlord's notice is upheld.

There was no dispute that the Two Month Notice complies with section 52 of the Act. As a result, and as the tenant's application seeking its cancellation was dismissed, I find that the landlord is therefore entitled to an Order of Possession under section 55(1) of the Act in relation to the Two Month Notice.

Section 68(2)(a) of the Act states that without limiting section 62(3), the director may, in accordance with the Act, order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy. Residential Tenancy Policy Guideline (Guideline) #53 states that an arbitrator may consider extending the effective date of an order of possession beyond the usual two days, and some factors to be considered in doing so, such as the point up to which rent has been paid, the length of the tenancy, and whether it is reasonable to expect that they could vacate the property in two days. It also states that while an arbitrator may canvas the parties at the hearing to determine

whether they can agree on an effective date for the order of possession, ultimately the arbitrator has the discretion to set the effective date of the order of possession based on what they have determined is appropriate given the totality of the evidence and submissions before them.

The agent sought an order of possession on or before December 31, 2023, stating that the tenant has not yet paid rent for December. The tenant stated that December rent has not been paid in anticipation of the hearing, as if the tenancy were ended in December due to the Two Month Notice, they would be entitled to withhold December 2023 rent. However, the tenant stated that they could pay rent that day if needed.

The tenant stated that they have lived in the rental unit for over two years, and that they and their children have medical conditions. As a result, they stated that it would not be possible for them to vacate that quickly. They also stated that they have purchased a home which is currently undergoing remediation for rodents and asbestos, which will be ready for occupancy no later than January 31, 2024. The tenant stated that if the tenancy can be ended on January 31, 2024, they will pay rent for December 2023, immediately.

I find an order of possession for December 31, 2023, unreasonable based on:

- the length of the tenancy,
- the composition of the family occupying the rental unit,
- the stated medical conditions of the tenant and their children,
- the time of year,
- the short period between the date of this decision and December 31, 2023, and
- the fact that the tenancy is being ended due to a Two Month Notice, not the behaviour of the tenant or occupants.

As the tenants have already secured housing that I am satisfied will be ready for occupancy on January 31, 2024, at the latest, I therefore find it reasonable to grant an order of possession for that date. Pursuant to sections 55(1) and 68(2) of the Act, and Guideline #53, I therefore grant the landlord an order of possession for the rental unit effective at 1:00 p.m. on January 31, 2024.

### **Is the tenant entitled to recovery of either filing fee?**

As the tenant was not successful at cancelling both notices, and the tenancy is therefore being ended, I decline to grant the tenant recovery of the filing fee.

### **Conclusion**

Pursuant to sections 55(1) and 68(2) of the Act, and Guideline #53, I therefore grant the landlord an order of possession for the rental unit effective at **1:00 p.m. on January 31,**

**2024, after service of this Order** on the tenant. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to sections 51(1) and 51(1.1) of the Act, the tenant may withhold January 2024 rent, or otherwise recover an amount equivalent to one months rent payable under the tenancy agreement from the landlord as they were served with a Two Month Notice under section 49 of the Act. However, the tenant was ordered to pay any outstanding rent for December of 2023 as soon as possible.

Pursuant to section 57(2) of the Act, the landlord must not take actual possession of the rental unit if the tenant overholds unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

Pursuant to sections 7, 57(2) and 67 of the Act, the landlord may claim compensation from the tenant for any period that they overhold the rental unit after the tenancy is ended, and for the costs of enforcing the order set out above.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 7, 2023

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Residential Tenancy Branch