



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MT, CNL

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Landlord's Use of Property pursuant ("the 2 Month Notice") pursuant to section 66; and
- cancellation of the landlords' 2 Month Notice pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Landlord HM applied orally for an order of possession should the tenants' application be unsuccessful.

### Preliminary Matter – Service of Documents

Landlord HM testified that he personally served the tenants with the 2 Month Notice to End Tenancy ("2 Month Notice") on December 11, 2014. His undisputed testimony was that the tenants told him they would deny receipt of the notice. Landlord HM testified that he then sent the 2 Month Notice by registered mail to the tenants on December 19, 2014. He provided a Canada Post tracking number. The tenants confirmed receipt of the 2 Month Notice by registered mail. Based on all of the evidence provided and pursuant to section 88 and 90 of the *Act*, I find both tenants deemed served with the 2 Month Notice on December 26, 2014, five days after its registered mailing.

Tenant BF testified that she sent her Application for Dispute Resolution package with a notice of hearing by fax to the landlord on or about January 22, 2015. Tenant BF testified that she served the notice by fax because she felt mailing the package would take too long. Section 89 of the *Act* provides special rules for certain documents, including an application for dispute resolution.

89 (1) An application for dispute resolution ... when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Tenant BF acknowledges receiving the above information about proper service of the dispute resolution package. She chose to serve the package in another way out of convenience. The landlord acknowledged receipt of the package however, there is a further requirement that the tenants must meet with respect to filing and service of their application. It must be served within the allowable timeframe provided under the Act.

Landlord HM relies on section 49 to end this tenancy, providing sworn testimony that he requires the unit for himself. He provided the 2 Month Notice in December 2014 with an effective date of March 1, 2015.

Section 49(8) provides that a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice. Section 49(9) provides that 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 tenants applied under section 66 of the Act for more time. Section 66 provides that a time limit may be extended only in exceptional circumstances. Tenant BF submitted that she and Tenant RB were “in shock” on receipt of their notice. She testified that she

and Tenant RB tried to find ways to resolve the situation with the landlord. She testified that she and Tenant RB tried to look for a new residence. Both tenants testified that they were unsuccessful in finding a new residence and, after the Christmas holidays, they decided they wanted to stay in the rental unit. Twenty seven days after deemed service of the notice to end tenancy and forty two days after the landlord claims he personally served the notice, the tenants applied for dispute resolution. When the tenants made their application, they were well past the timeline to file a dispute resolution application. I find that their testimony raises no exceptional circumstances to be considered as a reason for this delay.

I deny the tenants application for more time to apply in this matter. I dismiss the tenant's application in its entirety, and decline to cancel the notice to end tenancy.

#### Issues to be Decided

With a notice to end tenancy in effect, is the landlord entitled to an Order of Possession as a result of oral application at this hearing?

#### Background and Evidence

This tenancy began in 1989. The current rental amount of \$1350.00 is payable on the first of each month. The landlord is the son in law of the tenants. The landlord provided undisputed testimony that his own residence needs serious repair and he must reside in the current rental unit. After a discussion with the tenants regarding his situation, the landlord issued a 2 Month Notice to the tenants.

#### Analysis

The tenants did not make application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property. In accordance with section 49(9) of the *Act*, the tenants' failure to take this action within fifteen days led to the end of their tenancy on March 1, 2015 and requires them to vacate the rental premises by that date.

As noted above, the tenants' application to cancel the notice is dismissed. The tenancy will end on the effective date of the notice, March 1, 2015.

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

Landlord HM applied orally at the hearing for an Order of Possession pursuant to section 55(1) of the Act allowing a landlord to make such a request. As the tenants' application to cancel the 2 Month Notice is dismissed, I find that the landlord is entitled to an Order of Possession dated March 1, 2015.

### Conclusion

The tenants' application is dismissed in its entirety, with the effect that this tenancy ends on March 1, 2015, the effective date of the 2 Month Notice.

The landlord is entitled to an Order of Possession dated March 1, 2015. The landlord will be given a formal Order of Possession which must be served on the tenant(s) as soon as possible. If the tenants do not vacate the rental unit by the date required, the landlord may enforce this Order in 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: February 16, 2015

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Residential Tenancy Branch

