Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL, MNDCL, MNDL (File Number 1)
CNR, CNC, CNL, FFT, OLC, MNDCT, RP, RR, LRE, PSF, AAT, LAT, AS, MNRT, OT (File Number 2)
CNL, MNDCT, LRE, AAT, PSF, LAT, OLC, AS (File Number 3)

Introduction

This hearing was convened by way of conference call in response to three Applications for Dispute Resolution (the "Applications") filed by the Tenant on July 14, 2020 and August 16, 2020. The Tenant applied as a landlord on File Number 1 and as a tenant on File Numbers 2 and 3.

The Tenant applied as follows on File Number 1:

- For reimbursement for the filing fee;
- To recover unpaid rent;
- For compensation for monetary loss or other money owed; and
- For compensation for damage caused by the tenant, their pets or guests to the unit or property.

The Tenant sought a monetary award of $90,400,100.00 on File Number 1.

The Tenant applied as follows on File Number 2:

- To dispute a 10 Day Notice;
- To dispute a One Month Notice;
- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property;
- For reimbursement for the filing fee;
- For an order that the landlord comply with the Act, regulation and/or the tenancy agreement;
- For compensation for monetary loss or other money owed;
- For a repair order;

- To reduce rent for repairs, services or facilities agreed upon but not provided;
- To suspend or set conditions on the landlord's right to enter the rental unit;
- For an order that the landlord provide services or facilities required by the tenancy agreement or law;
- For the landlord to allow access to the unit for the tenant and/or guests;
- For authorization to change the locks to the rental unit;
- To be allowed to assign or sublet where the landlord's permission has been unreasonably withheld;
- To be paid back for the cost of emergency repairs made during the tenancy; and
- Other issues not listed.

The Tenant sought a monetary award of $180,001,550.00 on File Number 2.

The Tenant applied as follows on File Number 3:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property;
- For an order that the landlord comply with the Act, regulation and/or the tenancy agreement;
- For compensation for monetary loss or other money owed;
- To suspend or set conditions on the landlord's right to enter the rental unit;
- For an order that the landlord provide services or facilities required by the tenancy agreement or law;
- For the landlord to allow access to the unit for the tenant and/or guests;
- For authorization to change the locks to the rental unit; and
- To be allowed to assign or sublet where the landlord's permission has been unreasonably withheld.

The Tenant sought a monetary award of $35,000.00 on File Number 3.

This matter came before me September 03, 2020 in relation to File Numbers 1 and 2. The matter was adjourned to October 05, 2020 and File Numbers 1, 2 and 3 were joined. Interim Decisions were issued September 04, 2020 and October 06, 2020. This decision should be read with the Interim Decisions.

The Tenant appeared at the October 09, 2020 hearing with R.W. and R.M. to assist. The Landlords appeared at the hearing with Counsel. A.L. appeared at the hearing. N.M. appeared at the hearing for S.P. BC LTD.

I explained the hearing process to the parties who did not have questions when asked. Everyone present, other than Counsel, provided affirmed testimony.

The Tenant's name as indicated on the Applications is different than as indicated on some of the documentary evidence provided. None of the parties raised this as an issue during the hearing. However, I have included both the Tenant's name as indicated on the Applications and as indicated on the documentary evidence in the style of cause for completeness.

During the hearing, the Tenant suggested that R.M. is a party to this proceeding. I did not accept that R.M. is a party to this proceeding and this will be addressed further in the decision below.

A.L. and S.P. BC LTD. were named as respondents in File Number 3. A.L. attended the hearings on October 05, 2020 and October 09, 2020. N.M. attended the hearings for S.P. BC LTD. on October 05, 2020 and October 09, 2020. I have removed A.L. and S.P. BC LTD. from the style of cause as I am not satisfied either is a landlord which will be addressed further in the decision below.

Both parties submitted evidence on File Number 3. Service was addressed in the Interim Decisions. I also addressed service at the October 09, 2020 hearing.

At the September 03, 2020 hearing, R.W. testified that hearing packages were sent to the Landlords by registered mail to the address shown on title documents for the rental unit. R.W. testified that hearing packages were sent to S.P. BC LTD. by registered mail to their company address. R.W. testified that the packages were sent August 24, 2020. R.W. provided five tracking numbers; however, R.W. could not say which tracking number related to which package. The Tenant submitted Canada Post receipts with five tracking numbers on them.

At the October 05, 2020 hearing, Counsel for the Landlords confirmed receipt of the hearing package for File Number 3. Counsel advised that the Landlords did not receive anything else from the Tenant in relation to this matter.

N.M. confirmed receipt of the hearing package for File Number 3 on August 24, 2020. N.M. testified that he did not receive anything further from the Tenant in relation to this matter.

A.L. testified that she did not receive anything from the Tenant in relation to this matter and learned of the hearing through the Landlords.

R.W. confirmed the Tenant's evidence was not served on the respondents. R.W. confirmed the Interim Decision issued September 04, 2020 was not served on the respondents as required in the Interim Decision. R.W. testified that the hearing packages for all three Applications were served on the Landlords and N.M. on August 24, 2020. R.W. testified that the hearing package for File Number 3 was sent to A.L. but possibly at the wrong address.

Counsel advised that the Landlords' evidence was served on the Tenant and relied on an Affidavit about service in evidence. The Affidavit states that the evidence was served September 22, 2020 by regular mail.

Neither R.W. nor the Tenant had received the Landlords' evidence as of October 05, 2020.

In the Interim Decision issued October 06, 2020, the parties were directed to re-serve relevant documents.

At the October 09, 2020 hearing, Counsel acknowledged receipt of the hearing packages for all three Applications, the Interim Decision issued September 04, 2020 and the Tenant's evidence, other than the Canada Post receipts. Counsel advised that he received the hearing packages and Interim Decision October 05, 2020 and all evidence October 08, 2020. R.W. agreed with this timeline. Counsel advised that he had time to review the evidence but not time to check the Landlords' records in response to the evidence.

N.M. testified that he received the hearing packages for all three Applications, the Interim Decision issued September 04, 2020 and the Tenant's evidence. N.M. testified that he received these somewhere between three days before the hearing and the day before the hearing. N.M. testified that he had reviewed the evidence.

A.L. testified the she received the hearing packages for all three Applications, the Interim Decision issued September 04, 2020 and the Tenant's evidence from N.M. October 08, 2020. A.L. testified that she had reviewed the evidence.

R.W. testified that the hearing packages for all three Applications and Interim Decision issued September 04, 2020 were sent to N.M. October 05, 2020 and the evidence was sent the day before the hearing.

R.W. and the Tenant confirmed receipt of the Landlords' evidence. R.W. testified that she received some evidence October 05, 2020 and some October 06, 2020 or October 07, 2020. R.W. confirmed she had reviewed the evidence.

The Tenant testified that he received the Landlords' evidence two days before the hearing. The Tenant raised issues with the timing of service. The Tenant acknowledged receipt of the package of evidence mailed to him by the Landlords. The Tenant said he had reviewed what he could so far.

I will address service of the Landlords, Tenant and R.W. I am not addressing service of S.P. BC LTD. or A.L. given my finding below that neither are properly named as respondents in these proceedings. I do not find it necessary to address service given no decisions or orders are being made against S.P. BC LTD. or A.L. and therefore any lack of service does not prejudice S.P. BC LTD. or A.L.

Pursuant to section 59(3) of the *Residential Tenancy Act* (the "*Act*"), the Tenant was required to serve a copy of the hearing packages for the Applications on the Landlords within three days of filing them "or within a different period specified by the director."

Pursuant to rule 3.1 of the Rules of Procedure (the "Rules"), the Tenant was required to serve the hearing packages and all evidence on the Landlords within three days of the hearing packages being made available by the RTB.

Pursuant to rule 3.14 of the Rules, the Tenant was required to serve his evidence on the Landlords not less than 14 days before the hearing.

Pursuant to rule 3.15 of the Rules, the Landlords were required to serve their evidence on the Tenant not less than seven days before the hearing.

Pursuant to rules 3.5 and 3.16 of the Rules, each party bears the onus to prove they complied with the service requirements set out in the *Act* and Rules.

Rule 3.17 of the Rules states:

> The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established [by the *Act* and Rules] provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

In relation to the hearing packages, Counsel for the Landlords advised that the Landlords had not received the hearing packages for File Numbers 1 or 2 by the October 05, 2020 hearing. R.W. testified that the hearing packages for all three Applications were sent August 24, 2020. The Tenant has the onus to prove service of the hearing packages. The only documentary evidence of service submitted by the Tenant is Canada Post receipts which do not show what was included in the packages sent. Given the conflicting testimony, and absence of sufficient evidence to support R.W.'s testimony, I am not satisfied the hearing packages for File Numbers 1 or 2 were served on the Landlords as of October 05, 2020.

The hearing for File Numbers 1 and 2 was on September 03, 2020 and I heard from the Tenant and R.W. on this date. Although File Numbers 1 and 2 had been adjourned and joined with File Number 3, given the issues of service raised at the October 05, 2020 hearing, my final decision in relation to File Numbers 1 and 2 is that these Applications are dismissed due to lack of service of the hearing packages.

The hearing packages for File Numbers 1 and 2 should have been served on the Landlords by August 03, 2020 as they were made available by the RTB July 31, 2020. On R.W.'s own testimony, the Tenant did not comply with this timeline and therefore did not comply with section 59(3) of the *Act* or rule 3.1 of the Rules. Further, as noted above, I am not satisfied the Landlords received the hearing packages for File Numbers 1 or 2 prior to the hearing on September 03, 2020. Nor am I satisfied the Landlords had received these as of October 05, 2020. The Tenant was ordered to re-serve the hearing packages for File Numbers 1 and 2 in the Interim Decision issued September 04, 2020 (page 4). On R.W.'s own testimony, the Tenant did not comply with this order. In the circumstances, the Tenant has failed to prove service of the hearing packages for File Numbers 1 and 2 in accordance with the *Act*, Rules or the Interim Decision issued September 04, 2020.

I find it would be unfair to allow the Tenant to proceed on File Numbers 1 and 2 when I am satisfied the Landlords had not received the hearing packages for these until after

the hearing on September 03, 2020 and after the hearing on October 05, 2020. In the circumstances, the Applications as they relate to File Numbers 1 and 2 are dismissed.

The Tenant applied as a landlord on File Number 1. As explained in the decision below, I do not accept that the Tenant is a landlord in relation to the rental unit. Therefore, File Number 1 is dismissed without leave to re-apply.

File Number 2 is dismissed with leave to re-apply. However, this decision does not extend any time limits set out in the *Act*. Further, this decision does not change that the RTB only has jurisdiction to decide monetary claims up to $35,000.00 (see section 58(2)(a) of the *Act* and Policy Guideline 27, page 3).

I am satisfied the Landlords received the hearing package for File Number 3 as Counsel confirmed this. Therefore, I will address and decide File Number 3.

In relation to the Tenant's evidence for File Number 3, the Tenant was required to serve it such that the Landlords received it no later than September 20, 2020 pursuant to rule 3.14 of the Rules. R.W. acknowledged that the Tenant's evidence had not been served on the Landlords as of October 05, 2020. Therefore, the Tenant failed to comply with rule 3.14 of the Rules.

At the October 09, 2020 hearing, Counsel confirmed the Landlords had received the Tenant's evidence. Counsel also confirmed he had reviewed the evidence. Counsel advised that the Landlords did not have time to check their records in response to the Tenant's evidence; however, Counsel did not outline what of the Tenant's evidence the Landlords might have responded to further with documentary evidence and did not outline what further documentary evidence the Landlords might have had in relation to this matter.

I am satisfied admission of the Tenant's evidence is not unfair and does not prejudice the Landlords. The Tenant's evidence consists of twelve documents and three Canada Post receipts. I find based on the number and nature of the documents that they could have easily been reviewed in a short period of time. Given Counsel had reviewed the evidence, I am satisfied Counsel and the Landlords were able to respond to it at the hearing. Further, Counsel and the Landlords were aware of the issues before me and therefore I am not satisfied they were deprived of the opportunity to submit all relevant documentation in their possession. In the circumstances, I admit the Tenant's evidence.

In relation to the Landlords' evidence, the Landlords were required to serve it such that the Tenant received it no later than September 27, 2020 pursuant to rule 3.15 of the Rules. The Affidavit states that the Landlords' evidence was sent September 22, 2020. However, the Tenant testified that he had not received the evidence by October 05, 2020. In the absence of further evidence of service, I am not satisfied the Landlords complied with rule 3.15 of the Rules.

At the October 09, 2020 hearing, the Tenant testified that he received the Landlords' evidence October 07, 2020. R.W. acknowledged receiving the Landlords' evidence October 05, 2020 and either October 06, 2020 or October 07, 2020. Although the Tenant raised issues about the timing of service of the evidence, R.W. confirmed she had reviewed the evidence.

I am satisfied admission of the Landlords' evidence is not unfair and does not prejudice the Tenant. The Landlords submitted 14 documents and five video clips relevant to the substantive issues before me. Given the amount and nature of this evidence, I am satisfied it could have easily been reviewed in a short period of time. Although the Tenant raised issues about reviewing the evidence, R.W. confirmed she had reviewed the evidence. I find this important because R.W. appeared at all three hearings to assist the Tenant and spoke on the Tenant's behalf throughout the hearings. Further, the Tenant relied on R.W. to make submissions and answer questions throughout the hearings. Given R.W. had time to review the evidence, I am satisfied R.W. and the Tenant were able to respond to it at the hearing. In the circumstances, I admit the Landlords' evidence.

I also note that the Tenant raised issues with timing of service of the evidence when the Tenant had not complied with the Rules in relation to the timing of service. I have admitted the Tenant's evidence despite his non-compliance, and I find it fair to admit the Landlords' evidence despite their non-compliance.

In summary, I will address File Number 3 and all evidence submitted is admitted.

In the Interim Decision issued October 06, 2020, I stated that I would deal with the following issues (page 3):

- The dispute of the Two Month Notice to End Tenancy for Landlord's Use of Property;
- The requests for reimbursement for the filing fee; and

- The submission of K.F. that he has an ownership interest in the rental unit and whether the RTB has jurisdiction to decide this matter.

However, the Tenant only sought reimbursement for the filing fee on File Numbers 1 and 2. Given File Numbers 1 and 2 have been dismissed, the Tenant is not entitled to reimbursement for the filing fee in relation to these Applications. The requests for reimbursement for the filing fee are therefore dismissed without leave to re-apply.

The issues I will decide in relation to File Number 3 are as follows:

- Whether the RTB has jurisdiction to decide this matter; and
- The dispute of the Two Month Notice to End Tenancy for Landlord's Use of Property dated June 26, 2020 (the "Notice").

The remaining issues raised on File Number 3 will not be addressed. Rule 2.3 of the Rules states:

> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The Tenant has disputed the Notice and the Landlords are seeking an Order of Possession based on the Notice. Subject to the decision on jurisdiction, the dispute of the Notice will determine whether the tenancy continues or ends and is therefore the most urgent issue. Given this, I will address the dispute of the Notice. The remaining issues raised are not sufficiently related to the dispute of the Notice and are therefore dismissed with leave to re-apply pursuant to rule 2.3 of the Rules. This decision does not extend any time limits set out in the *Act*. Further, this decision does not change that the RTB only has jurisdiction to decide monetary claims up to $35,000.00 (see section 58(2)(a) of the *Act* and Policy Guideline 27, page 3).

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

I note that it was difficult to understand and follow the Tenant at times. When asked specific questions, the Tenant talked about other issues which were not apparently relevant to the issue being discussed. The Tenant had to be asked a number of times to stop and refocus on the question asked or issue being addressed.

Issues to be Decided

1. Does the RTB have jurisdiction to decide this matter?

2. If the RTB does have jurisdiction to decide this matter, should the Notice be cancelled?

3. If the Notice is not cancelled, should the Landlords be issued an Order of Possession based on the Notice?

Background and Evidence

Jurisdiction

The Tenant raised the issue of jurisdiction both in the Applications and at the hearings. The Tenant took the position that he has an ownership interest in the unit. The Landlords took the position that there is only a tenancy agreement between the parties and the Tenant does not have an ownership interest in the rental unit.

The position of R.W. and the Tenant is that the Landlords are misrepresenting the Tenant as a tenant and attempting to use the RTB to remove him from the unit. Both maintain that the Tenant has an ownership interest in the unit and therefore the RTB does not have jurisdiction to decide this matter. Both confirm the Tenant is seeking a finding that the Landlords cannot evict him pursuant to the Notice.

The Tenant provided verbal testimony about the jurisdiction issue. The Tenant also provided documentary evidence which the Tenant and R.W. submit supports the Tenant's verbal testimony. R.W. and R.M. provided testimony at the hearings. However, R.W. and R.M. confirmed they do not have personal knowledge of the circumstances surrounding the jurisdiction issue and their testimony and submissions are based on what the Tenant told them as well as documents the Tenant has shown them.

At the September 03, 2020 hearing, R.W. and the Tenant confirmed the Tenant's position is that this was a rent to own situation, and he has an ownership interest in the unit. R.W. and the Tenant acknowledged the Landlords are the only ones on title for the unit.

I asked R.W. and the Tenant at the first hearing if there was a tenancy agreement in this matter. R.W. said no. The Tenant testified that there was an agreement signed in 2015 for $1,450.00. The Tenant also mentioned signing a Form K. The Tenant further testified as follows. He only got a Form K when he moved in in 2010. He paid a $200.00 damage deposit. He paid $3,000.00 to a family who he thought owned the unit. He did not sign anything in 2010. In 2013 or 2015, he signed a tenancy agreement with his girlfriend and Landlord Y.Y. This tenancy agreement expired.

When questioned further about a tenancy agreement, R.W. again stated that there was never a tenancy agreement between the parties. The Tenant testified that he and his girlfriend were forced to sign a tenancy agreement which was an unlawful agreement.

At the October 05, 2020 hearing, I told R.W. and the Tenant to again set out their position about jurisdiction and the Tenant having an ownership interest in the unit given the Landlords were not at the first hearing.

R.W. provided the following testimony and submissions. The Tenant attended the rental unit building in May of 2010. The Tenant met with A.L. who said there was a unit in foreclosure and described a cash for key assumption. The Tenant moved into the unit and understood that he was making monthly installments to purchase the property. When the Tenant took over the unit, he thought it was an assignment and assumption agreement. The Tenant has since made mortgage payments exceeding $150,000.00. There was no documentation signed. The Tenant did not have representation. A rent to own situation was described by A.L. to the Tenant. The Tenant has a right to a claim on title.

R.W. confirmed nothing has been filed in the BC Supreme Court in relation to this matter.

The Tenant testified as follows. He received a lump sum of money and attended the rental unit building with an interest to purchase. He was told the units in the building were individually owned. He was introduced to A.L. who said she had a foreclosure unit and was scheduling an open house. A.L. took him to the unit. A.L. said there was a family living in the unit which he would need to negotiate with. A.L. said he would buy out the family. The family told him it was their property. He thought the family owned the unit. A.L. asked for cash. He gave the family $3,000.00. The family living in the unit gave him the keys to the unit. No documentation was signed. He moved into the unit in May of 2010. He pays money each month including for hydro and electricity.

In relation to the monthly payments, the Tenant further testified as follows. He paid money to A.L. A.L. subsequently told him he had to move out. Then Landlord Y.Y. became involved. The money he paid each month started changing. He paid cash each month. He used to write cheques. He then started doing e-transfers. The hydro and electricity are in his name.

At the October 09, 2020 hearing, R.W. again submitted that the Tenant attended the rental unit building with the intent to purchase and discussed buying the rental unit with A.L. R.W. made the following further submissions. The Tenant would not have known A.L. was brokering the property in April if his version of events is not true and if he rented the unit in September. A verbal agreement can be a legal agreement even if there is no documentation of it. The money paid by the Tenant for the unit and on renovations to the unit exceeds the jurisdiction of the RTB.

R.W. made the following submissions in relation to the evidence submitted.

The Contract of Purchase and Sale submitted by the Landlords shows A.L. was a witness to the sale of the unit which shows A.L. was connected to the unit at the relevant time.

A letter from a university submitted shows when the Tenant left the university residences which supports that the Tenant was looking for a new residence. It also supports the Tenant's timeline of events.

The Form K submitted by the Landlords was not signed by the Tenant in September.

The Tenant signed the 2015 tenancy agreement submitted by the Landlords but was under the impression it was a rent to own situation. The Tenant was not trying to present himself as not having an ownership interest in the unit when he signed the tenancy agreement.

The Tenant recognized himself as a landlord and signed two tenancy agreements, both submitted, as the landlord for the unit.

A Proxy Authorization showing A.L. was appointed as the proxy for the Landlords was submitted to show A.L. acted for the Landlords in relation to the unit for voting at a strata meeting and brokering the unit to the Tenant. The documentation also shows suspicious activity within strata as well as efforts to remove S.P. BC LTD. as the property management company. The documentation shows other owners complained

about the conduct of N.M. and A.L. and shows N.M. and A.L. have acted inappropriately in the past.

Court documents have been submitted which relate to damage in the unit and injury to the Tenant.

The documentation submitted by the Landlords shows a new mortgage on the property in June of 2010 which coincides with the Tenant's timeline of events. R.W. acknowledged there are no mortgages on the property which relate to the Tenant.

The Tenant further testified as follows in relation to the written tenancy agreement from 2015 in evidence. He had a girlfriend who he wanted to put on title. Landlord Y.Y. and others were saying he "had to pay this or move out". People were coming into the unit. He never gave the Landlords $750.00. He was forced to sign the tenancy agreement. The Tenant mentioned a hospital intervening or trying to intervene in relation to the 2015 tenancy agreement. The Tenant reiterated that he came in with the intention of purchasing the unit.

R.M. provided testimony at the October 09, 2020 hearing. I have not outlined his testimony here as it was not made clear to me how it was relevant or added to the testimony of R.W. and the Tenant.

A.L. testified at the October 09, 2020 hearing. A.L. advised that she is a member of the strata council for the rental unit building. A.L. confirmed she does not have an ownership interest in the rental unit. A.L. denied that she ever did a showing of the rental unit. A.L. denied that she introduced the Tenant to a family living in the rental unit. A.L. denied that there was a rent to own agreement as stated by the Tenant and R.W. A.L. denied there was a foreclosure on the unit. A.L. denied that she has ever acted on behalf of the Landlords' in relation to the tenancy between them and the Tenant.

A.L. further testified as follows. Approximately 10 years ago, she met the Tenant in the parking lot of the building. The Tenant asked about renting a unit in the building and she told him there was someone with a unit for rent. She introduced the Tenant to Landlord Y.Y. She does not know if there was a family living in the rental unit at the time. The previous owner of the rental unit was not the family described by the Tenant. She once stopped the Tenant from attending a strata meeting because he said he was the owner of the rental unit, but he is not. She called the RCMP to attend due to this

incident regarding the strata meeting. The Tenant does not pay a maintenance fee for the rental unit as claimed, the maintenance fee is paid by the owners.

I note that R.W. put to A.L. that she said she had never been to the unit. Based on my recollection and understanding at the time, I told R.W. this was not what A.L. said and that A.L. had said there was no showing of the unit. I told R.W. to reword her question. Upon review of my notes, I see that A.L. did say she had never been to the unit and I have taken note of this when making this decision.

N.M. provided testimony at the October 09, 2020 hearing. N.M. confirmed that S.P. BC LTD. is the property management company for the rental unit building. N.M. testified that the maintenance fee is always paid by the owner. N.M. testified that the Tenant has insisted he is the new owner of the rental unit and they have asked for documentation of this.

In response to questions from Counsel, N.M. testified as follows. A Form K must be endorsed by a tenant and owner. A Form K must be provided within one month of a tenant moving into the building. The property management company only has the one Form K from 2010 on their file in relation to the rental unit. Owners are fined if a Form K is not submitted. The Landlords have not been fined in relation to a Form K issue regarding the rental unit.

Landlord Z.Y. testified as follows. The Landlords purchased the rental unit June 12, 2010. The seller was T.I. as shown in the Contract of Purchase and Sale. Landlord Y.Y. was the purchaser. The Contract of Purchase and Sale was signed May 17, 2010. The completion date was June 11, 2020. The possession date was June 12, 2020. This was not a foreclosure.

Landlord Z.Y. further testified as follows. Landlord Y.Y. met the Tenant in early September of 2010. The Tenant was introduced to Landlord Y.Y. by A.L. The Tenant was at the building looking for a place to rent. A.L. happened to be there and introduced the Tenant to Landlord Y.Y. A.L. did not do anything further.

Landlord Z.Y. further testified as follows. The Landlords rented the unit to the Tenant in September of 2010. A written tenancy agreement was signed at that time. The Landlords discarded the written tenancy agreement from 2010 because a new tenancy agreement was signed in 2015. The new tenancy agreement was done at the request of the Tenant. The Landlords received the Form K in evidence from the Tenant September 08, 2020 and signed it the same date. The Tenant completed the top of the

Form K and Landlord Y.Y. completed the owner information and entered the date. The Form K submitted in evidence was obtained from the strata office October 05, 2020.

Landlord Z.Y. testified that he never told the Tenant the Landlords were selling the rental unit and that the Landlords never suggested to the Tenant that they were giving him part of the rental unit.

Landlord Y.Y. testified at the October 09, 2020 hearing. Landlord Z.Y. had to translate for Landlord Y.Y. at times. Landlord Y.Y. testified as follows. She entered a tenancy agreement with the Tenant in 2010. She never told the Tenant this was a foreclosure, the unit was for sale, this was a rent to own situation or that this was a purchase agreement. A.L. introduced the Tenant to her. There was a family living in the rental unit before the Tenant. The family were the Landlords' first tenants from June 15, 2010 to September 15, 2010. The family ended their tenancy because they were leaving Canada.

Landlord Y.Y. further testified as follows. There was a written tenancy agreement between her, the Tenant and two other tenants. The tenancy started September 08, 2010 and was for a fixed term of one year. The tenancy then became a month-to-month tenancy. Rent was $1,400.00 per month due on the first day of each month. The tenants paid a $700.00 security deposit. At some point, one of the other tenants moved out and the Tenant found other roommates including S.I. She signed the written tenancy agreement in 2010. The Tenant and one of the other tenants also signed the written tenancy agreement.

Counsel made the following submissions. Even assuming the Form K was submitted one month after the Tenant moved in, he would have moved in in August and not May of 2010. The Landlords did not have possession of the rental unit in May of 2010 and could not have rented it out at that point. There is no public record of a foreclosure sale in relation to the rental unit. The Contract of Purchase and Sale does not mention a foreclosure. There is no evidence to sustain the Tenant's position that this was a foreclosure. There is no mortgage in favour of the Tenant on the title documents. In relation to the Tenant knowing the timeline of purchase of the rental unit, this information is in public records and it is not unbelievable that a person who lives in the rental unit would know when the unit was purchased. The documents show the unit was purchased and then rented out to the Tenant.

Counsel made the following further submissions. The 2015 tenancy agreement is the most current tenancy agreement and the Tenant agrees he signed it. There is simply

no evidence of anything other than a tenancy between the parties and therefore the RTB should take jurisdiction and not accept the verbal testimony of the Tenant.

During reply, R.W. pointed out that A.L. said she never attended the unit but A.L. witnessed the sale of the unit. In response, A.L. said she did not witness the sale of the rental unit. It was pointed out to A.L. that her name is on the Contract of Purchase and Sale. A.L. testified that she does not recall singing the Contract of Purchase and Sale. Counsel advised that the Landlords told him A.L. did help them with the purchase of the rental unit.

R.W. submitted that A.L. being involved in the sale of the unit shows A.L. was brokering the sale of the unit. R.W. reiterated that the Tenant spoke to A.L. about buying the unit. R.W. testified that the Tenant did not know who the owners of the unit were and thought the family living in it were the owners. R.W. further submitted as follows. The Tenant was 18 years old at the time. The Tenant was under the impression he was buying the unit. The Tenant paid money at the instruction of A.L. and did not understand the legal requirements.

In response to a question from R.W., the Landlords testified that they no longer have the tenancy agreement between them and the family who lived in the rental unit prior to the Tenant.

I have reviewed all documentary evidence submitted. The Tenant submitted the following relevant documentary evidence.

A Moving Application form which appears to have been completed by the Tenant. The form is dated May 26, 2010.

A Proxy Authorization appointing the Tenant as a proxy to attend and vote at a strata meeting.

A Proof of Residence form from a university showing the Tenant had a housing contract for the period September 06, 2009 to April 29, 2010.

A letter about strata council and S.P. BC LTD. which calls for the removal of S.P. BC LTD. and council members. The letter raises an issue about an ongoing investigation into the use of fake proxies. It also raises an issue about comments made by N.M.

A further letter about the issue of the credibility of proxies.

A Proxy Authorization appointing A.L. as a proxy to attend and vote at a strata meeting.

Two written tenancy agreements in which the Tenant indicates he is a landlord in relation to the rental unit.

A Form K completed with the Tenant's name as a tenant along with V.O. and S.R. It also includes the Tenant's name under "Information of Owner or Agent". There are two signatures of tenants on the Form K.

The Landlords submitted the following relevant evidence.

A BC Assessment print out linking the rental unit to the title search.

A title search for the rental unit. It shows the Landlords are the registered owners.

A written tenancy agreement on the RTB form. It names Landlord Y.Y. as the landlord. It names the Tenant and S.I. as the tenants. It relates to the rental unit. The tenancy start date is October 01, 2015. The tenancy was for a fixed term of 12 months with a term that the tenancy could continue on a month-to-month basis or another fixed length of time. Rent was $1,500.00 per month. It states that the tenants were required to pay a $750.00 security deposit. The agreement was signed by Landlord Y.Y., the Tenant and S.I. on October 02, 2015.

A completed Form K. It has the Tenant, V.O. and S.R. listed as the tenants for a tenancy commencing September 21, 2010. Landlord Y.Y.'s information is included under "Information of Owner or Agent". It has two tenant signatures and the owner's signature. It is stamped as received September 08, 2020.

A Contract of Purchase and Sale for the rental unit. The seller is T.I. and the buyer is Landlord Y.Y. The completion date is June 11, 2010. The possession date is June 12, 2010. It is clear from the Contract of Purchase and Sale that A.L. was involved in the sale of the rental unit.

A title search from May 17, 2010 showing T.I. as the registered owner of the rental unit.

The Notice

The Landlords submitted a copy of the Notice. It is addressed to the Tenant. It relates to the rental unit. It is signed by Landlord Y.Y. and dated June 26, 2020. It has an effective date of August 31, 2020. The reason for the Notice is that the rental unit will be occupied by the landlord or the landlord's close family member. The Notice indicates that the child of the landlord or landlord's spouse will occupy the unit.

At the September 03, 2020 hearing, R.W. and the Tenant said the Landlords' son had served the Tenant with a Two Month Notice and that the Tenant was advised to dispute the Notice. I understood the Tenant to say the son attended the rental unit and said he was moving in. R.W. and the Tenant also referred to a letter. However, both confirmed the Tenant was only served with one RTB notice to end tenancy being a Two Month Notice. They acknowledged it was served on the Tenant in person June 26, 2020. They advised it was addressed to the Tenant. They confirmed the reason for the Two Month Notice was that the rental unit would be occupied by the Landlords or a close family member. They said the Landlords' son was moving in and said they did not know if this was on the form. The Tenant testified that the Landlords also said they are going to renovate and that their nephew is moving in.

At the October 09, 2020 hearing, Counsel advised that the Notice was served on the Tenant in person June 26, 2020. The Tenant then said he only received a letter from the Landlords and did not receive a Two Month Notice on the RTB form.

Landlord Y.Y. testified that the Tenant was served with the Notice along with a letter. The Landlords had submitted a video showing service. Landlord Y.Y. confirmed she served the Notice on the Tenant with her son. Landlord Y.Y. said she took the video submitted.

The Tenant testified that he only received a letter June 26, 2020 in person. The Tenant testified that he took the letter to the RTB which lead to the dispute.

R.W. could not confirm what was served on the Tenant. R.W. said the letter was not submitted because the Tenant took it to the RTB and no longer had it after attending the RTB office.

I asked the Tenant and R.W. how they described the Notice to me at the September 03, 2020 hearing if the Tenant did not receive it. R.W. said she does not recall them describing it.

R.W. acknowledged the Tenant disputed the Notice July 14, 2020 and August 16, 2020. R.W. acknowledged the Tenant did not apply to extend the timeline for disputing the Notice.

R.W. said the Tenant disputed the Notice late because he was in the hospital from June 26, 2020 until the second week of July. R.W. acknowledged there is no documentary evidence submitted to support this. R.W. said she saw documentation showing the Tenant was in the hospital. R.W. said she did not upload this documentation because she did not know this issue would be addressed. R.W. said medical staff contacted the Landlords and told them the Tenant was in the hospital.

The Landlords denied they were contacted about the Tenant being in the hospital and denied knowing he was in the hospital.

I asked the Tenant and R.W. how the Tenant knew to dispute the Notice if he did not receive it. R.W. said the Tenant discussed it with doctors and police and was told to go to the RTB. R.W. said the Tenant received paperwork describing that he needs to vacate the rental unit at the end of August.

Counsel made the following submissions. In relation to the Tenant disputing the Notice, the Tenant was healthy and arguing with Landlord Y.Y. the day the Notice was served as shown in the video. The Tenant was told he had 15 days to dispute the Notice which is shown in the video. There is no information submitted about when the Tenant went into the hospital.

In relation to the grounds for the Notice, Landlord Y.Y. testified that the Landlords want to have the rental unit back for their daughter to occupy. A signed letter from the Landlords' daughter is in evidence.

R.W. submitted that the Tenant thought the Landlords' son was going to occupy the rental unit, not their daughter, so there has been a change in the Landlords' plan.

The Tenant testified as follows. The Landlords' son said he needed the property. This has now changed to the Landlords' daughter needing the unit. What the Landlords are saying and what they submitted as evidence are two different things. The Landlords' son served him, but the Landlords' daughter wants to move in.

The Landlords denied they previously said their son was going to live in the rental unit.

I asked the Tenant what his understanding that the Landlords' son was going to live in the rental unit is based on. The Tenant said his understanding is based on the fact that the Landlords' son served him with the letter.

The Landlords submitted the following relevant evidence.

A signed letter from their daughter stating that she intends to move into the rental unit in September of 2020.

A Proof of Service in relation to the Notice. It states that the Notice was served on the Tenant in person June 26, 2020. The Proof of Service is signed by L.Y. and witnessed by Landlord Y.Y.

A video of Landlord Y.Y. and her son serving the Tenant. I have watched the video. The Landlords' son tells the Tenant he has 15 days to submit a dispute of the notice with the RTB. I note that the Landlords' son does not say he is going to move into the rental unit or anything about who is going to move into the rental unit.

Analysis

Jurisdiction

The RTB has jurisdiction over landlords and tenants who have entered into a tenancy agreement. Section 2 of the *Act* states:

> 2 (1) Despite any other enactment but subject to section 4…this Act applies to tenancy agreements, rental units and other residential property.

The definitions of "landlord", "tenant" and "tenancy agreement" are set out in section 1 of the *Act* as follows:

> "landlord", in relation to a rental unit, includes any of the following:
>
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> (i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this…

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

"tenant" includes

(a) the estate of a deceased tenant, and

(b) when the context requires, a former or prospective tenant.

Policy Guideline 27 addresses jurisdiction of the RTB and states at page five:

2.TRANSFERING OWNERSHIP

A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction. <u>In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:</u>

- <u>money exchanged was rent or was applied to a purchase price;</u>
- <u>the agreement transferred an interest higher than the right to possession;</u>
- <u>there was a right to purchase in a tenancy agreement and whether it was exercised.</u> (emphasis added)

Pursuant to the *Act* and Policy Guideline 27, an arbitrator has jurisdiction to decide whether parties are landlords or tenants, whether parties entered a tenancy agreement governed by the *Act* and whether a relationship between parties is one that is governed by the *Act*. Although the RTB cannot decide disputes over ownership, when one party asserts that there is only a tenancy agreement in place, the RTB does have jurisdiction to decide whether the agreement in place is a tenancy agreement governed by the *Act*.

The Tenant takes the position that there was a rent to own agreement here and that he has an ownership interest in the rental unit. The Tenant bases this position on verbal conversations he says he had with A.L. and a family living in the rental unit in May of 2010. The Tenant says he attended the rental unit building, spoke to A.L. about a foreclosure, was told or thought the family living in the rental unit owned the rental unit and paid A.L. or the family $3,000.00. A.L. denies this occurred.

R.W. submitted that a verbal agreement can be a legal agreement and I acknowledge this. However, here the Tenant says he made a verbal agreement with A.L. and a family living in the rental unit. A.L. denies this occurred. The mere assertion by the Tenant that there was a verbal rent to own agreement, when the other parties of the purported verbal agreement deny there was such an agreement or are not present to speak to whether there was such an agreement, is not sufficient to prove on a balance of probabilities there was a rent to own agreement. Given the conflicting testimony, I have considered the reliability and credibility of the Tenant and A.L., the likelihood of their respective positions and the evidence provided to support their respective positions.

In relation to reliability and credibility, I did not find one or the other of the Tenant and A.L. to be more reliable or credible. I had some concerns about the testimony of both the Tenant and A.L. For example, I find the Tenant changed his position about receipt of the Notice from the first two hearings to the last hearing which is explained below. In relation to A.L., she testified that she was not involved in the sale of the rental unit which is clearly contradicted by the Contract of Purchase and Sale. Despite these points, I did not find there were sufficient reliability or credibility concerns to discount the testimony of either the Tenant or A.L.

However, I do find the Tenant's version of events unlikely as I find it unlikely that the Tenant would have entered a rent to own agreement and paid $3,000.00 to A.L. or a family without obtaining some documentation of this. It is my understanding that A.L. and the purported family were not known to the Tenant at the time. I find it particularly

unlikely that the Tenant would have paid $3,000.00 to someone he did not know and had no prior relationship with without obtaining some documentation of this.

Here, there is no documentation of a rent to own agreement before me. Nor is there any documentation showing the Tenant paid A.L. or a family $3,000.00 such as a receipt or bank records showing the Tenant withdrew this amount on the relevant date.

During the hearing, R.W. suggested that the Tenant was young, unrepresented and did not know his legal rights in May of 2010. I do not find that these factors explain the lack of documentation. I find it unlikely that an eighteen year old would not understand the importance of obtaining documentation when attempting to purchase property or when paying someone they did not know $3,000.00. Further, I do not find being unrepresented or not knowing legal rights relevant. Obtaining documentation when attempting to purchase property or paying someone $3,000.00 is common sense, not something that requires legal representation or knowledge of legal rights.

Not only is there no written rent to own agreement before me, or any written document that could be construed as a rent to own agreement, but there is no correspondence or communications between the Tenant, A.L. and a family that support the Tenant's position about a rent to own agreement. There are no letters, emails or text messages that refer to an agreement or the transfer of $3,000.00. The only two documents before me that refer to a rent to own agreement are the Moving Application and copy of an e-transfer from the Tenant in 2020. Both documents are authored by the Tenant. Neither document shows approval or acknowledgement of the statements in it by A.L., the family described by the Tenant or the Landlords.

Further, the Tenant did not call any witnesses to support his position about a rent to own agreement or paying $3,000.00 to A.L. or a family. R.W. and R.M. appeared with the Tenant at the hearings; however, both acknowledged they do not have personal knowledge of what occurred in 2010 and therefore their testimony is not corroborative.

R.W. and the Tenant submitted that the documentary evidence does support their position; however, I do not find it sufficient to prove on a balance of probabilities that there was a rent to own agreement for the following reasons.

The Moving Application is a form that appears to have been completed by the Tenant. The notations on it are written assertions of the Tenant. I do not find the written assertions of the Tenant sufficient to prove on a balance of probabilities that there was a rent to own agreement.

It was not made clear to me what the Proxy Authorization naming the Tenant is supposed to show or how it supports the Tenant's position. I note that I have the Tenant's signature and Landlord Y.Y.'s signature on other documents submitted. It appears the Tenant signed the Proxy Authorization although I am not sure who signed it and this was not clarified during the hearing. In any event, there is no reference in the Proxy Authorization to a rent to own agreement or the transfer of $3,000.00 and I do not find that this form supports the Tenant's position.

The Proof of Residence only shows where the Tenant was residing from September 06, 2009 to April 29, 2010. It says nothing about where the Tenant resided after this period. Nor does it support that there was a rent to own agreement or a transfer of $3,000.00.

The letters relating to strata do not support that there was a rent to own agreement or a transfer of $3,000.00 as they do not refer to these points. I understood R.W. to submit that the documents show misconduct by N.M. and A.L. Any misconduct by N.M. is irrelevant as the Tenant did not assert that N.M. was involved in the rent to own agreement or transfer of $3,000.00. In relation to A.L., the letters do not name A.L. and I am not satisfied they show misconduct by A.L. In any event, I do not find that any misconduct by A.L. in relation to Proxy Authorizations supports the Tenant's position about a rent to own agreement or transfer of $3,000.00. I find these issues to be unrelated.

In relation to the Proxy Authorization naming A.L., I understood R.W. to say this shows A.L. has acted for the Landlords. I accept that A.L. has acted for the Landlords in relation to the purchase of the unit and strata meetings as the documentary evidence shows this. However, I do not accept this supports that the interactions as described by the Tenant occurred between the Tenant, A.L. and a family. A.L. assisting the Landlords does not show that A.L. entered into a rent to own agreement with the Tenant or that the Tenant paid A.L. $3,000.00.

The two tenancy agreements in which the Tenant names himself as landlord do not support that there was a rent to own agreement or $3,000.00 paid. Again, these documents are authored by the Tenant and simply reflect his own assertion that he is a landlord in relation to the rental unit. These documents were not drafted or consented to by the Landlords or A.L. The Tenant's own assertion that he is a landlord and has an ownership interest in the rental unit does not make it so.

The Form K submitted by the Tenant is again a form completed by the Tenant. It was not made clear to me how it supports the Tenant's position. If the Tenant is relying on

the fact that he is named under “Information of Owner or Agent”, again, this is simply the Tenant’s own assertion and is not sufficient to support that there was in fact a rent to own agreement in place. Further, the Landlords submitted the completed Form K showing the Tenant’s name was crossed out prior to the form being submitted. Again, the form does not show any agreement between the parties about ownership.

Given the above, I do not find the documentary evidence sufficient to support the Tenant’s position about a rent to own agreement or transfer of $3,000.00.

Further, I find the Landlords have provided sufficient evidence to support their position and call into question the Tenant’s position.

The BC Assessment print out, title searches and Contract of Purchase and Sale all show that ownership of the rental unit changed from T.I. to Landlord Y.Y. in June of 2010. The most recent title search shows that the Landlords are the registered owners of the rental unit. The documents do not show that the Tenant has an ownership interest in the rental unit. The documents do not show that A.L. or a family as described by the Tenant owned the rental unit in May of 2010 such that they could enter into a rent to own agreement with the Tenant. The documents show the Landlords did not own the rental unit until June of 2010 and therefore A.L. could not have entered into a rent to own agreement on their behalf in May of 2010.

Counsel submitted that the documentary evidence does not support that there was a foreclosure in relation to the rental unit. I note that the Tenant did not point to any documentary evidence to support that there was a foreclosure in relation to the rental unit, other than his own written assertions of this.

Importantly, the Landlords submitted a written tenancy agreement on the RTB form signed by Landlord Y.Y., the Tenant and S.I. on October 02, 2015. The tenancy agreement includes the usual terms associated to a tenancy and does not say anything about a rent to own agreement or the transfer of $3,000.00. The Tenant acknowledged he signed the written tenancy agreement. I find it unlikely that the Tenant and S.I. would sign a tenancy agreement in 2015 if there was in fact a rent to own agreement in place.

The Tenant testified that he was forced to sign the 2015 tenancy agreement. I do not accept this as the Tenant has not provided any evidence to support his verbal assertion on this point. I do not accept that a party can sign a written tenancy agreement, which is a contract, and then later be relieved of the implications of signing the contract by

claiming they were forced to sign it without any compelling evidence to support the position. The Tenant did not call S.I. as a witness to support his testimony on this point. Nor did the Tenant provide some audio or visual documentation of the signing to support his position. Nor did the Tenant provide any documentation subsequent to the signing of the written tenancy agreement to support that he was forced to sign it. As far as I can tell, these hearings are the first time the Tenant has raised the issue of being forced to sign the 2015 tenancy agreement. I find it unlikely that the Tenant was forced to sign the tenancy agreement and did not raise this as an issue for five years.

The above addresses the documentary evidence I have before me that is relevant to the issue of jurisdiction. I have considered the documentary evidence both separately and together. I have considered it in light of the testimony provided. I do not find the documentary evidence sufficient to support the Tenant's position about a rent to own agreement or transfer of $3,000.00. I find the documentary evidence does support the position of the Landlords that the Tenant does not have an ownership interest in the rental unit and that the parties entered into a tenancy agreement.

Given the above, I find it more likely than not that the Tenant and Landlords entered into a tenancy agreement in 2010. Based on the documentary evidence, I find the Landlords own the rental unit and are landlords as that term is defined in section 1 of the *Act*. Based on the testimony of Landlord Y.Y., I am satisfied on a balance of probabilities that she entered into a tenancy agreement with the Tenant and two other tenants in 2010. I note that the presence of two other tenants in 2010 is supported by both Form Ks submitted. Based on the 2015 written tenancy agreement, I find the original tenancy agreement ended and a tenancy between Landlord Y.Y., the Tenant and S.I. started October 01, 2015. The Tenant submitted that this tenancy agreement expired. I do not accept this. Tenancy agreements only end in accordance with the *Act*. In September of 2016, section 44 of the *Act* stated:

> 44 (1) A tenancy ends only if one or more of the following applies:
>
> > (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following…
> >
> > (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
> >
> > (c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended…

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

There is insufficient evidence before me that the tenancy was ended in accordance with section 44(1) of the *Act*. I am satisfied section 44(3) of the *Act* applied and the tenancy continued on a month-to-month basis.

During the hearing, R.W. submitted that the Tenant has paid in excess of $150,000.00 towards the rental unit. Given my findings above, I am satisfied the Tenant has lived in the rental unit for 10 years. I am also satisfied the Tenant has been paying rent during this time. Rent payments can easily add up to more than $150,000.00 over a 10-year tenancy. However, this does not change the tenancy relationship or result in the Tenant having an ownership interest in the rental unit. Nor does it suggest that there was a rent to own agreement or ownership interest. Nor does it result in the RTB not having jurisdiction as it is the nature of the relationship that determines whether the RTB has jurisdiction, not the amount of rent that has been paid or the amount of money the Tenant has put into the rental unit.

Given the above, I am satisfied the parties entered into a tenancy agreement and therefore the *Act* applies and the RTB has jurisdiction to decide this matter.

Given the above, I make the following findings about the parties to this matter.

During the hearing, the Tenant asserted that R.M. is a party to this proceeding. R.W. confirmed R.M. is not named on the Applications as a party. R.M. confirmed he does not currently live in the rental unit. The Tenant and R.M. testified that R.M. stayed at the rental unit two years ago. R.M. is not named in the documentation submitted as a tenant. In the circumstances, I am not satisfied R.M. is a tenant in relation to the rental unit given he is not on the most current tenancy agreement, the 2015 written tenancy

agreement, and does not live in the rental unit. Given this, R.M. is not a party to this proceeding.

A.L. was named as a respondent in this proceeding. This proceeding is between the Tenant as a tenant and the Landlords as landlords in relation to the tenancy agreement. I am not satisfied A.L. meets the definition of "landlord" under section 1 of the *Act*. Although I am satisfied A.L. introduced the Tenant to Landlord Y.Y. and acted for the Landlords in relation to the purchase of the rental unit and strata meetings, I am not satisfied based on the evidence provided that A.L. acted on behalf of the Landlords in relation to the tenancy between them and the Tenant. Further, this proceeding is about the Notice and therefore it is the owners of the rental unit who should be named as respondents. Here, the owners are the Landlords, not A.L.

S.P. BC LTD. was named as a respondent in this proceeding. I am not satisfied based on the evidence provided that S.P. BC LTD. acted on behalf of the Landlords in relation to the tenancy between them and the Tenant. Further, as stated above, it is the owners of the rental unit who should be named as respondents. Here, this is the Landlords and not S.P. BC LTD.

The Notice

The Notice was issued pursuant to section 49(3) of the *Act*. The Tenant had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*.

Landlord Y.Y. testified that the Tenant was served with the Notice along with a letter. The Landlords submitted a Proof of Service signed by L.Y. and witnessed by Landlord Y.Y. The Proof of Service states the Notice was served on the Tenant in person June 26, 2020.

The Tenant acknowledged receiving a letter June 26, 2020 from the Landlords' son. Further, the Landlords submitted a video of the Landlords' son serving the Tenant with an envelope.

At the October 09, 2020 hearing, the Tenant took the position that he did not receive the Notice and only received the letter. The Tenant has not provided evidence to support this testimony, such as a witness or a photo of the envelope received and what it contained. Nor could R.W. or R.M. speak to what the Tenant received June 26, 2020 as neither were present.

In the circumstances, I am satisfied on a balance of probabilities that the Notice was served on the Tenant in person June 26, 2020 based on the testimony of Landlord Y.Y. and the Proof of Service which is signed by L.Y.

I also note the following although it does not form the basis for my decision above. I found the Tenant's testimony on October 09, 2020 that he did not receive the Notice contradictory to comments R.W. and the Tenant made at the September 03, 2020 and October 05, 2020 hearings. Until the October 09, 2020 hearing, I understood from comments of R.W. and the Tenant that service of the Notice was a non-issue. I note the comments at paragraph six at page two of the Interim Decision issued September 04, 2020:

> R.W. and K.F. advised that Respondents Y.Y. and Z.Y. are on title for the "rental unit". R.W. and K.F. advised that the son of Y.Y. and Z.Y. served K.F. with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on the RTB form on June 26, 2020. R.W. and K.F. advised that the reason for the Notice is that the rental unit will be occupied by the landlord or landlord's close family member.
>
> The position of R.W. and K.F. in relation to the Notice was as follows. The Notice was the only notice to end tenancy served on K.F. on an RTB form. The Notice was improperly served…
>
> (emphasis added)

The above reflects what R.W. and the Tenant said at the September 03, 2020 hearing. Neither R.W. nor the Tenant sought to correct this statement in the decision issued September 04, 2020. I find the Tenant's position that he did not receive the Notice conflicts with the position taken by R.W. and the Tenant at the September 03, 2020 and October 05, 2020 hearings.

The Tenant had 15 days from June 26, 2020 to dispute the Notice. The 15th day fell on a Saturday and therefore the deadline to dispute the Notice fell to the following Monday, July 13, 2020, pursuant to the definition of "days" in the Rules. The Tenant disputed the Notice July 14, 2020 (File Number 2) and August 16, 2020 (File Number 3). The Application in relation to File Number 2 has been dismissed with leave to re-apply given the timing of service and therefore it is as if the Tenant did not dispute the Notice July 14, 2020. Therefore, the Tenant disputed the Notice August 16, 2020.

The Tenant did not apply for more time to file the dispute of the Notice and therefore this issue is not before me and I decline to extend the time.

However, I also note that I would not have extended the time to file the dispute of the Notice even if the Tenant had applied for this. Section 66(1) of the *Act* states:

> 66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review]. (emphasis added)

Policy Guideline 36 deals with extending a time period and states at page one:

> The *Residential Tenancy Act*[1]…provide[s] that an arbitrator may extend or modify a time limit established by these Acts ***only in exceptional circumstances…***
>
> The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said…
>
> Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:
>
> - the party was in the hospital at all material times
>
> The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.
>
> (emphasis added)

R.W. stated that the Tenant disputed the Notice late because he was in the hospital. R.W. stated that the Landlords were aware of this; however, the Landlords denied they were aware of this. I would expect to see some documentary evidence that the Tenant was in the hospital at all material times and that his condition prevented him from contacting someone to act on his behalf as such documentary evidence should be

readily available given hospital visits are documented. In the absence of documentary evidence confirming these points, I would not have been satisfied that the Tenant had proven that exceptional circumstances existed such that the deadline for filing the dispute should be extended.

In the circumstances, the Tenant did not dispute the Notice in accordance with section 49(8)(a) of the *Act*. Section 49(9) of the *Act* states:

> (9) 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.

Pursuant to section 49(9) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended August 31, 2020, the effective date of the Notice. The Tenant was required to vacate the rental unit by August 31, 2020.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*.

Given the Tenant is conclusively presumed to have accepted the Notice, the Tenant's dispute of the Notice is dismissed without leave to re-apply.

Section 55(1) of the *Act* requires an arbitrator to issue a landlord an Order of Possession when a tenant disputes a notice to end tenancy, the dispute is dismissed and the notice complies with section 52 of the *Act*.

I have dismissed the Tenant's dispute of the Notice and found the Notice complies with section 52 of the *Act*. Therefore, I issue the Landlords an Order of Possession for the rental unit. The Landlords sought an Order of Possession effective as soon as possible and therefore are issued an Order of Possession effective two days after service on the Tenant.

Conclusion

I am satisfied there is a tenancy agreement governed by the *Act* between the parties and therefore the *Act* applies and the RTB has jurisdiction to decide this matter.

I issue the Landlords an Order of Possession based on the Notice. This Order is effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

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

Dated: October 21, 2020

Residential Tenancy Branch