



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Tenant's application: CNC, FF

Landlords' application: OPN, MND, MNDC, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for the following:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord; and
- to recover the cost of the filing fee.

The landlords applied for the following:

- an order of possession of the rental unit based upon the tenant's written notice;
- compensation for alleged damage to the rental unit by the tenant;
- compensation for a monetary loss or other money owed;
- authority to keep the tenant's security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The tenants/applicants and the landlords attended the hearing and were affirmed. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

The landlords confirmed receiving the tenants' application. They also confirmed serving only applicant, LD, with their application as their position is that the other listed applicant, KS, is not a tenant. No issues were raised with regard to service of evidence.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters-

The landlords named their witness, MH, who ultimately did not testify, as a respondent/tenant in their application. This matter will be more fully set out in this Decision. For the reasons set out below, I have removed MH from further consideration in the landlords' application.

The landlords listed multiple other claims, which I find are not sufficiently related to the primary issues in both applications. The main issue I find is whether the tenancy will end or continue. As such, I use my authority under the Rules to sever the unrelated issues in the landlords' application and deal with their request for an order of possession of the rental unit. The landlords' monetary claims are dismissed, with leave to reapply. The landlords' claims to retain the tenants' security deposit is dismissed, with leave to reapply, as this matter is premature. The security deposit may be dealt with at the end of the tenancy, except as otherwise provided in this Decision.

The tenant's application sought cancellation of a 1 Month Notice. The evidence shows that the landlords did not serve a 1 Month Notice, rather, the landlord sent LD a text message indicating that MH served a notice to vacate, which ended the tenancy. I therefore find I could not proceed on the tenants' application and their application is dismissed, without leave to reapply.

#### Issue(s) to be Decided

Are the landlords entitled to an order of possession of the rental unit based upon the tenant's written notice to vacate and filing fee?

### Background and Evidence

The written tenancy agreement filed in evidence shows a tenancy between the landlords and tenants, LD, and MH, with a start date of September 1, 2018. The monthly rent was \$1850 and the tenants paid a security deposit of \$1850, which is double the amount allowed under the *Residential Tenancy Act*.

In their application, the landlords wrote the following description, redacted to protect privacy:

*One of the co-tenants, Ms. (MH), proactively sent a written notice to end the tenancy via email on June 26, 2023. In light of this notice, we informed the other co-tenant, Mr. (LD), that we have received a written notice to end the tenancy effective July 30, 2023 and we are not renewing any tenancy agreement with him. Mr (LD) claimed that this written notice has no legal grounds to have him vacated the rental property on July 30, 2023 and decided to overstay beyond July 30, 2023.*

The landlords testified as follows, in relevant part: In February 2023 they received an email from LD that MH had left the rental unit; however, they never received a written notice from MH. In a text message in April 2023, LD introduced KS as a girlfriend, and suggested that KS would be moving in, but there was no confirmation. They did meet KS at the rental unit when attending for repairs. They never communicated with MH the last few years of their tenancy and only dealt with LD.

They agreed there was a conversation about MH moving out, and because LD was having difficulty paying the rent, when they gave a notice of rent increase, LD said they wanted MH off the tenancy agreement. The landlords agreed as long as there was a new written tenancy agreement made. The landlords said they never accepted KS as a tenant as they were not able to do their due diligence in screening KS as a tenant. LD would never provide the legal name of KS. They denied that they contacted MH to provide a written notice to end the tenancy.

Evidence filed by the landlord included email messages of June 26, 2023 from MH to the landlords, in which MH asked to be released from the tenancy agreement and another email in which MH gave a written notice to end the tenancy on July 30, 2023.

Additional evidence was a follow-up handwritten notice signed by MH, providing notice they were ending the tenancy on July 30, 2023, and listed the rental unit address.

The tenant, LD, testified as follows, in relevant part: MH vacated over the course of January and by February 18, 2023, MH was completely vacated. They had been notifying the landlords for 2 months that MH wanted out of the tenancy and the landlords suggested a roommate to help with the monthly rent. They had a conversation with the landlords that KS was moving in. When the landlords served a notice of rent increase, they requested the landlords to serve a proper notice without the name of MH and to include KS.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 44(1)(a)(i) of the Act provides that a tenancy ends when a tenant gives notice to the landlord.

As it pertains to a tenant's notice to end the tenancy, section 45(4) requires the notice to end the tenancy given under this section comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act states that in order to be effective, a notice to end the tenancy must be in writing and must be signed and dated by the tenant giving the notice, give the address of the rental unit, and state the effective date.

The evidence shows that LD and MH were co-tenants under a written tenancy agreement beginning on September 1, 2018.

Also undisputed is that MH provided written notice on June 26, 2023, to end the tenancy on July 30, 2023. Under the Act, the effective date of the tenant's written notice is corrected to July 31, 2023.

*Residential Tenancy Policy Guideline*, "13. Rights and Responsibilities of Co-tenants" (Guideline 13) sets out the definition of a co-tenant:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

In this case, a co-tenant, MH, provided notice to the landlord to end the tenancy on July 30, 2023. Guideline 13 sets out the consequences when a co-tenant gives notice:

A tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants.

If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants.

Further, Guideline 13 provides:

Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.

I find it reasonable that the landlords did not consider the tenancy ended until they received the tenant's written notice, effective July 31, 2023, which is the day after they filed their application for dispute resolution.

For this reason, I find that LD has been overholding in the rental unit and find insufficient evidence that the landlords reinstated the tenancy. The consistent evidence is that the landlords insisted on a new written tenancy agreement with the tenant LD and KS, after being able to screen KS as a tenant, which was refused.

When considering the Act and Policy Guideline, I find the tenancy ended on July 31, 2023 for both tenants, by MH's written notice.

I therefore find that the landlord is entitled to an order of possession of the rental unit under section 55(2)(a) of the Act.

I grant the landlord recovery of their filing fee of \$100.

### Conclusion

The landlords' application is successful.

The landlord is granted an order of possession effective **October 31, 2023 at 1:00 pm**. This order must be served on the tenant to be enforceable and may be enforced in the Supreme Court of British Columbia. I find the tenancy ends on October 31, 2023, at 1:00 pm.

The tenant is **cautioned** that the landlord's costs of enforcement of the order of possession, including **bailiff fees**, is subject to recovery from the tenant.

The landlord is granted a monetary order in the amount of \$100, the cost of the filing fee. If the landlord chooses, they may keep \$100 from the tenant's security deposit to satisfy this monetary award. If the landlord deducts \$100 from the tenant's security deposit, the monetary order is void and of no force or effect.

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: October 11, 2023

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Residential Tenancy Branch