



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL FF

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution, seeking an order of possession for landlords' use of the unit or property, and to recover the filing fee.

The landlords appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The landlords testified that the tenant was served the Notice of a Dispute Resolution Hearing by registered mail on July 25, 2012. The landlords submitted a copy of the registered mail receipt as evidence prior to the hearing. Section 90 of the *Act*, states that documents served by mail are deemed to be received on the fifth day after the documents are mailed. I find that the tenants were deemed served with the Notice of a Dispute Resolution Hearing on July 30, 2012, in accordance with the *Act*.

### Issues to be Decided

- Should the landlords be granted an order of possession for landlord's use of the unit or property?
- Should the landlords recover the filing fee?

### Background and Evidence

The landlord affirmed that a month to month verbal tenancy agreement began on or about July 15, 2009. Rent was due on the fifteenth day of each month in the amount of \$650.00. The tenant paid \$200.00 as a security deposit at the start of the tenancy.

The landlords confirmed service of the 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") dated April 28, 2012, by personal service on April 28,

2012 with an effective date of June 28, 2012. The landlords provided copies of the Notice as evidence for this proceeding.

The landlords testified that the tenant paid rent on July 7, 2012 in the amount of \$650.00. The landlords also testified that the tenant paid rent again on August 7, 2012 in the amount of \$325.00. The landlords stated that they did not issue receipts for “use and occupancy only” when accepting the rent from the tenant for the months of July and August, 2012.

The landlords stated that their son and his wife will be moving into the rental unit where a home based business will be started. The landlords testified that a permit for the home based business had already been applied for at the time of the hearing.

### Analysis

**Order of possession** - I find that the tenant was served with the Notice on April 28, 2012, and did not dispute the Notice within 15 days of receiving the Notice. The effective date of the Notice automatically corrects under the *Act* to July 15, 2012. The tenant is conclusively presumed pursuant to section 47 of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice.

According to Residential Policy Guideline 11, if the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to whether the receipt shows the money was received for use and occupation only, whether the landlord specifically informed the tenant that the money would be for use or occupation only, and the conduct of the parties.

Based on the conduct of the landlord stating a permit for a home based business had been applied for, and that their son and his wife continue to plan to move into the rental unit, and the conduct of the tenant by not disputing the Notice, I find that the tenant accepted that the tenancy was ending after being served with the Notice.

Accordingly, **I grant the landlords an order of possession effective two days after service on the tenant.**

**Tenant's compensation** – The landlord served the Notice under section 49 of the *Act*. Section 51 of the *Act* states:

**Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Given the above, **I order** the landlords to refund to the tenant the full amount of rent paid for July, 2012 in the amount of \$650.00, in accordance with section 51 of the *Act*.

The landlords have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee which may be deducted from the security deposit.

Conclusion

**I grant the landlord an order of possession effective two days after serving the tenant.** This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find that the landlord have established a total monetary claim of \$50.00 for recovery of the filing fee. I order that the landlords retain **\$50.00** from the security deposit in full satisfaction of the claim, leaving a balance of \$150.00 remaining as the security deposit, to be dealt with in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: August 20, 2012

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Residential Tenancy Branch