



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlords; their agents; and the tenant.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for landlord's use of property; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 49, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord testified the tenancy began in July 2012 as a month to month tenancy for a monthly rent of \$1,150.00 due on the 1<sup>st</sup> of each month with a security deposit of \$500.00 paid.

The landlord provided into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued October 9, 2012 with an effective vacancy date of December 31, 2012 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member.

The tenant did not dispute the notice but testified that she has moved out yet because she has not been able to find suitable accommodation. She does believe that she may have a place set up for January 15, 2013.

The parties agree the landlord has received \$952.00 towards rent paid for the months of December 2012 and January 2013 leaving a balance owing of \$1,348.00. The parties

also acknowledge the tenant is entitled compensation in the amount of \$1,150.00 because the landlord issued the 2 Month Notice and as such the parties acknowledge the tenant still owes the landlord \$198.00 for rent.

While the landlords' original application included seeking payment for gas utilities the landlords, during the hearing, advised they would no longer seek this compensation.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

Section 49(8) goes on to say that within 15 days of receiving such a notice the tenant may dispute the notice by making an application for dispute resolution.

And Section 49(9) states that if a tenant who receives a notice under Section 49 does not file an application for dispute resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

From the evidence before me the tenant did not file an application for dispute resolution seeking to cancel the notice and as such I find, in accordance with Section 49(9) the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit.

Based on the agreed upon calculations I find the landlords have established the tenant owes the landlord \$198.00 for rent.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$248.00** comprised of \$198.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$500.00 in satisfaction of this claim. I note this leaves a balance of \$252.00 in the security deposit that must be dispensed with in accordance with the *Act* at the end of the tenancy.

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: January 09, 2013.

