



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: OPL, FF  
CNL

### Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession / and recovery of the filing fee, and ii) by the tenant for cancellation of a notice to end tenancy for landlord's use of property. Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which the parties agree began approximately 12 years ago. Monthly rent of \$585.00 is due and payable in advance on the first day of each month, and a security deposit of \$260.00 was collected near the start of tenancy.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated March 31, 2014. While there is conflicting evidence around whether the notice was served by way of posting on the unit door on March 28 or March 31, 2014, the tenant testified that she retrieved the notice from the unit door on March 31, 2014. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is also March 31, 2014. Pursuant to section 53 of the Act which speaks to **Incorrect effective dates automatically changed**, I find that the correct date by when the tenant must vacate the unit should be shown on the notice as May 31, 2014.

The reason identified on the notice in support of its issuance is as follows:

The landlord has all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant filed an application to dispute the notice on April 14, 2014. I find that the tenant's application was filed within the 15 day period available to her pursuant to section 49(8) of the Act. Despite certain concerns around the landlord's notice, in her application I find that the tenant has not questioned the good faith intent of the landlord in issuing the notice. The landlord's application for dispute resolution was later filed on May 14, 2014.

During the hearing the parties undertook to resolve the dispute in a manner which meets some of the practical needs of both.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a resolution and it was specifically agreed as follows:

### **RECORD OF SETTLEMENT**

- that the tenant will vacate the unit by no later than **Monday, June 30, 2014**, and that an **order of possession** will be issued in favour of the landlord to that effect.

As the parties negotiated a resolution of the main aspect of their dispute, I find that the landlord has established entitlement to recovery of ½ the \$50.00 filing fee, or **\$25.00**. For this purpose I order that the landlord may withhold \$25.00 from the security deposit at the end of tenancy.

In the meantime, the *immediate attention* of the parties is drawn to section 51 of the Act which speaks to **Tenant's compensation: section 49 notice**, and provides in part as follows:

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.

- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.
- (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

Following from the above statutory provision, the attention of the parties is also drawn to section 50 of the Act which speaks to how a **Tenant may end tenancy early following notice under certain circumstances.**

#### Conclusion

I hereby issue an **order of possession** in favour of the landlord effective **June 30, 2014**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby order that the landlord may withhold **\$25.00** from the tenant's security deposit at the end of tenancy in order to recover ½ the filing fee.

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: June 04, 2014

---

Residential Tenancy Branch

