



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for landlord's use of property, pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The tenant only attended the hearing for a few minutes, as he disconnected from the hearing due to telephone problems.

The landlord testified that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 4, 2015 ("2 Month Notice"), on the same date by way of posting to the tenant's rental unit door and on January 5, 2015 by way of registered mail. The landlord provided a Canada Post receipt and tracking number as proof of service with his Application. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the 2 Month Notice on January 10, 2015, five days after the registered mailing.

The landlord confirmed that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on March 24, 2015, by way of registered mail. The landlord provided a Canada Post receipt and tracking number as proof of service with his Application. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's Application on March 29, 2015, five days after the registered mailing.

### Issues to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of property?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord testified that this month to month tenancy began on January 1, 2014. Monthly rent in the amount of \$950.00 is due on the first day of each month. A security deposit of \$475.00 was paid by the tenant and the landlord continues to retain this deposit. No written tenancy agreement governs this tenancy. The tenant continues to reside in the rental unit, which is the basement level of a house, while the landlord resides on the main floor of the same house.

The landlord's 2 Month Notice, indicating an effective move-out date of March 31, 2015, entered into written evidence by the landlord, identifies the following reason for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

The landlord testified that he wishes to use the rental unit for his work office space. The landlord stated that he did not wish to reside in the rental unit, as he already lives on the upper floor. The landlord indicated that he wishes to create a separate work space from his residential home, with a separate entrance for work clients. The landlord indicated that he intends to repair and renovate the rental unit to convert it from residential to non-residential use, before he begins to use it for work in June 2015.

### Analysis

Section 49(6) of the Act states one of the reasons that a 2 Month Notice may be issued:

*(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:*

*(f) convert the rental unit to a non-residential use.*

The landlord intends to convert the rental unit to a non-residential use. He intends to use the rental unit for his office space. He does not intend to occupy the suite himself for residential use. The landlord has indicated an incorrect reason on the 2 Month Notice. The tenant does not have proper notice of the landlord's reason for ending this tenancy in order to meet the case against him.

Accordingly, the landlord's 2 Month Notice, dated January 4, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the landlord was unsuccessful in his Application, he is not entitled to recover the \$50.00 filing fee from the tenant.

### Conclusion

The landlord's entire application is dismissed.

The landlord's 2 Month Notice, dated January 4, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: April 24, 2015

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Residential Tenancy Branch

