



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: OPL, MNR, MNSD, FF

### Introduction

This hearing concerns the landlord's application for an order of possession for landlord's use of property / a monetary order as compensation for unpaid rent / retention of all or part of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

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

### Background and Evidence

Pursuant to a written tenancy agreement the month-to-month tenancy began on April 01, 2015. Monthly rent of \$750.00 is due and payable in advance on the first day of each month, and a security deposit of \$375.00 was collected.

Pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated April 15, 2015. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is July 01, 2015. The reason identified on the notice in support of its issuance is as follows:

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 tenants have not filed an application to dispute the notice and they presently still continue to reside in the unit.

The landlord also testified that no rent has been paid for June, July or August 2015, and the tenants do not dispute this. The tenant in attendance to the hearing testified in an agitated / combative tone and undertook to recite various reasons why the rent had been withheld for the 3 months in question, however, no related application for dispute resolution has been filed by the tenants.

### Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 2 month notice to end tenancy for landlord's use of property dated April 15, 2015. The tenants did not dispute the notice within 15 days after receiving it. The tenants are therefore conclusively presumed under section 49(9) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

As to the payment of rent, section 26 of the Act addresses **Rules about payment and non-payment of rent**, in part as follows:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Following from the above statutory provisions, in view of the affirmed testimony of the parties, and in the absence of evidence that the tenants have a right under the Act to deduct all or a portion of the rent, I find that the landlord has established entitlement to compensation for unpaid rent in the total amount of **\$2,250.00** (3 x \$750.00).

As the landlord has succeeded with the principal aspects of his application, I find that the landlord has also established entitlement to recovery of the **\$50.00** filing fee.

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**Total entitlement: \$2,300.00** (\$2,250.00 + \$50.00).

I order that the landlord may withhold the security deposit of **\$375.00**, and I grant the landlord a **monetary order** for the balance owed of **\$1,925.00** (\$2,300.00 - \$375.00)

Finally, going forward, the attention of the parties is drawn to section 51 of the Act which addresses **Tenant's compensation: section 49 notice**.

### Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,925.00**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

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: September 01, 2015

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Residential Tenancy Branch

