



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Code: OPL, FF

### Introduction

This matter was heard by conference call in response to a Landlords' Application for Dispute Resolution (the "Application") made on February 9, 2016 for an Order of Possession for the Landlords' use of the property and to recover the filing fee.

Two agents for the Landlord appeared for the hearing but only one of them provided affirmed testimony. The Landlords also provided a copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") into evidence prior to the hearing. There was no appearance by the Tenant during the ten minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents for this hearing by the Landlords to the Tenant.

The Landlords' agent testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents to the Tenant's rental unit by registered mail on February 12, 2016. The Landlords' agent provided the Canada Post tracking number into oral evidence to verify this method of service. She also testified that the Canada Post website shows that the Tenant received and signed for the documents on February 15, 2016. Therefore, based on the undisputed evidence of the Landlords' agent, I find the Tenant was served with the required documents pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act").

### Issue(s) to be Decided

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

### Background and Evidence

The Landlord testified that this tenancy started on October 1, 2014 for a fixed term period that ended on September 30, 2015 after which it then continued on a month to

month basis thereafter. Rent under the tenancy agreement is \$800.00 per month, payable by the Tenant on the first day of each month. The Tenant paid the Landlords a \$400.00 security deposit at the start of the tenancy which the Landlords still retain.

The Landlords' agent testified that the Notice was personally served to the Tenant on November 7, 2015. The Notice was provided into written evidence and is dated November 4, 2015 with a vacancy date of January 31, 2016. The reason on the Notice to end the tenancy is because "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 Landlords' agent confirmed that the Tenant did not dispute the Notice and has not moved out of the rental suite. As a result, the Landlords request an Order of Possession to end the tenancy. The Landlords' agent also testified that the Tenant is in rental arrears for the months of January, February and March 2016 and that the Tenant did not pay December 2015 rent as a way to receive the one month rent compensation payable under the Notice.

### Analysis

I have examined the Notice and I find that the contents of the approved form complied with Section 52 of the Act. I accept the undisputed evidence of the Landlords' agent that the Notice was personally served to the Tenant in accordance with Section 88(a) of the Act on November 7, 2016.

Section 49(8) of the Act provides the Tenant with 15 days to make an Application to dispute the Notice. Section 49(9) of the Act stipulates that if a tenant fails to dispute the Notice by making an Application within the 15 day time period, then they are conclusively presumed to have accepted the tenancy ends on the vacancy date of the Notice and they must vacate the rental unit by this date.

There is no evidence before me that the Tenant has disputed the Notice. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on January 31, 2016.

As the vacancy date of the Notice has now passed and the Tenant is still occupying the rental suite and is in rental arrears, the Landlords are entitled to an Order of Possession effective two days after service on the Tenant. This order must be served to the Tenant and may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

As the Landlords have been successful in this matter, the Landlords are also entitled to the \$100.00 Application filing fee. As a result, I allow the Landlord to deduct \$100.00 from the Tenant's security deposit to achieve this relief, pursuant to Section 72(2) (b) of the Act.

Conclusion

The Tenant has breached the Act by not moving out of the rental suite in accordance with the Notice. As a result, the Landlords are granted an Order of Possession effective two days after service on the Tenant. The Landlords are allowed to recover the filing fee from the Tenant's security deposit.

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: March 24, 2016

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Residential Tenancy Branch

