



# 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 pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenant CB (the tenant) attended the tenant KB was represented by his father DM. The landlord's agent and spouse attended. Those in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The agent testified that the landlord served the tenants with the dispute resolution package on 5 May 2016 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. The tenant admitted service. On the basis of this evidence, I am satisfied that the tenants were served with the dispute resolution package pursuant to section 89 of the Act.

The agent testified that the landlord served the tenants with the 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) on 25 February 2016 in person. The landlord provided me with witnessed proof of service document that showed the same. The tenant admitted service. On the basis of this evidence, I am satisfied that the tenants were served with the 2 Month Notice pursuant to section 88 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for landlord's use? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 October 2015. The tenancy was originally between the tenants and the prior owner of the rental unit. On or about 26 April 2016, ownership of the rental unit transferred to the successor landlord.

Monthly rent in the amount of \$1,800.00 is due on the first. The prior landlord collected a security deposit in the amount of \$900.00, which has not been returned to the tenants.

On 25 February 2016, the prior landlord served the 2 Month Notice to the tenants. The 2 Month Notice was dated 25 February 2016 and set out an effective date of 30 April 2016. The 2 Month Notice indicated that it was given as "all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit".

The tenants did not vacate the rental unit on 30 April 2016 and continue to occupy it. The agent testified that the landlord's family is living in a temporary basement suite while they wait for possession of the rental unit. The landlord has not received compensation for the tenants' use and occupancy of the rental unit in June as the necessary paperwork to the Ministry has not been executed.

On 11 May 2016, the tenants provided a signed statement indicating that they would vacate by 31 May 2016. On 14 May 2016, the tenants provided a signed acknowledgement indicating that they had received \$500.00 from the landlord to assist with vacating the rental unit.

The tenants' evidence is that they intended, in good faith, to vacate the rental unit; however, limited availability of appropriate rental units has frustrated their attempts to move. The tenants did not apply to dispute the 2 Month Notice and do not dispute that the landlord intends to use the rental unit for the purpose set out in the 2 Month Notice.

### Analysis

Subsection 49(5) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where:

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit...

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. Subsection 49(9) states:

- If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.

The tenants received the 2 Month Notice on 25 February 2016. This means that the tenants had until 11 March 2016 to apply to this Branch to cancel the 2 Month Notice. The tenants did not apply for dispute resolution within fifteen days of receiving the 2 Month Notice. As such, the tenants were conclusively presumed to have accepted that the tenancy ended as of 30 April 2016. The letters from the tenants in May do not indicate that the landlord has waived his right to seek possession under the 2 Month Notice. As such, the landlord is entitled to possession and his application for an order of possession is granted. As the tenants have not provided any payment towards their use and occupancy of the rental unit for June, I find that the landlord is entitled to a two-day order of possession.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. Pursuant to paragraph 72(2)(b), the landlord may choose to withhold the monetary award from the tenants' security deposit in which case the value of the tenants' security deposit is reduced to \$800.00.

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$100.00. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: June 02, 2016

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Residential Tenancy Branch