



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MT CNL FF O

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on May 13, 2016 (the "Application").

The Tenant seeks the following relief pursuant to the *Residential Tenancy Act* (the "Act"): more time to make an application to cancel a notice to end tenancy; an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated March 21, 2016 (the "2 Month Notice"); an order granting recovery of the filing fee paid by the Tenant; and other unspecified relief.

The Tenant attended the hearing on her own behalf, and was assisted by C.D. The Landlord appeared on his own behalf. All parties giving evidence provided a solemn affirmation.

The Landlord submitted documentary evidence which was sent to the Tenant by registered mail. The Tenant acknowledged receipt of the Landlord's documentary evidence.

The Tenant has indicated on her application that more time is required to dispute the 2 Month Notice. However, there was insufficient evidence to satisfy me that more time is required. Further, both parties were in attendance and prepared to proceed. This aspect of the Tenant's claim will not be considered further.

The parties were provided the opportunity to present evidence orally and in written and documentary form, and make submissions.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Should the 2 Month Notice be cancelled?
2. Is the Landlord entitled to an order of possession?

3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Landlord gave evidence concerning the sale of the rental property to new owners on February 2, 2016. The possession date was May 12, 2016.

The Tenant resided in the rental property at the time of the sale. Accordingly, the new owner, who wished to occupy the rental property, asked the Landlord to issue a notice to end tenancy pursuant to section 49 of the *Act*.

Based on the new owners' request, the Landlord issued the 2 Month Notice. A copy of the 2 Month Notice was included with the Landlord's documentary evidence. According to the Landlord, and as supported by a letter from J.R., the 2 Month Notice was served by leaving a copy in the Tenant's mailbox on March 21, 2016.

The Tenant says she did not receive the 2 Month Notice until April 26, 2016, when an envelope containing the 2 Month Notice was discovered in the yard.

The Tenant and C.D. also suggested during the hearing the 2 Month Notice was issued under false pretenses, and that the new owners do not intend to occupy the rental property.

The Tenant and C.D. also referred to other issues with the tenancy such as mice, mold, and issues with agents of the new owner attending the property. However, these issues are not the subject of this Application.

Analysis

In light of the oral and documentary evidence provided by the parties, and on a balance of probabilities, I find:

The Landlord says the 2 Month Notice was served on the Tenant by leaving a copy in the Tenant's mailbox. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to be received three days later on March 24, 2016.

The Tenant says the 2 Month Notice was not received until found in the yard on April 26, 2016.

Whether or not the 2 Month Notice was received by the Tenant on March 24 or April 26, 2016, is of no consequence. On receipt of a notice to end tenancy issued pursuant to section 49 of the *Act*, a tenant has 15 days to file an application for dispute resolution. Failing to do so leads to the conclusive presumption the tenancy ends on the effective date of the notice.

Even if I find the Tenant received the 2 Month Notice on April 26, 2016, which is asserted by the Tenant, the Application was not received at the Residential Tenancy Branch until May 13, 2016, 17 days later. Accordingly, I find the Tenant is out of time.

The Tenant's Application is dismissed.

As the Tenant has not been successful, I decline to grant a monetary award for recovery of the \$100.00 filing fee paid.

Section 55 of the *Act* requires me to grant an order of possession to a landlord when a tenant's application to cancel a notice to end tenancy is dismissed. Pursuant to section 55 of the *Act*, I grant an order of possession to the Landlord. The order will be effective on June 30, 2016, at 1:00 p.m.

#### Conclusion

The Tenants' application is dismissed and the 2 Month Notice is upheld.

Pursuant to section 55 of the *Act*, the Landlords are granted an order of possession, which will be effective on June 30, 2016, at 1:00 p.m. The order may be filed in and enforced as an Order of the Supreme Court of British Columbia.

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 13, 2016

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Residential Tenancy Branch