



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNSD, 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;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord and his son, R.S. (the landlord) attended the hearing via conference call and provided undisputed affirmed evidence. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was personally served with the notice of hearing package and the submitted documentary evidence on June 3, 2016. I accept the undisputed affirmed evidence of the landlord that the tenant was personally served on June 3, 2016 as per sections 88 and 89 of the Act. The tenant is deemed to have been properly served on June 3, 2016 as per section 90 of the Act.

### Preliminary Issue

At the outset the landlord withdrew his claim for damages and return of the security deposit as the tenancy has not yet ended and the landlord does not yet have a true accounting of all of the damages to the rental premises.

As well the landlord cancelled his second reason for the 2 Month Notice dated November 12, 2015 as he had misinterpreted the reason for the 2 Month Notice and intends for his son to occupy the rental unit.

I accept the landlord's withdrawal of the monetary portion of his application and the cancellation of the second reason for the 2 Month Notice. The hearing shall proceed with the landlord's request for an order of possession for landlord's use and recovery of his filing fee.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for landlord's use?

Is the landlord entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

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

The landlord provided undisputed affirmed testimony that the tenant was served with a 2 month notice dated November 12, 2015 in person on November 12, 2015. The 2 Month notice displays an effective end of tenancy date of January 31, 2016 and sets out 2 reasons for cause (the second reason was cancelled by the landlord).

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

The landlord provided testimony that his son, R.S. would be moving into the rental unit. The landlord also noted that there was significant damage throughout the rental caused by the tenant such as holes in the drywall.

### Analysis

Section 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

According to section 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.

In this case, I accept the landlord's undisputed affirmed evidence that the 2 month notice dated November 12, 2015 was properly served to the tenant in person on November 12, 2015. The landlord stated that he is unaware of an application filed for dispute of the 2 month notice from the tenant. I find that the tenant is conclusively presumed to have accepted that the tenancy has ended. The landlord is granted a 2 Day Order of Possession. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As the landlord has been successful in his application, I grant a monetary order to the landlord for recovery of the \$100.00 filing fee. Should the tenant 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.

### Conclusion

The landlord is granted an order of possession.  
The landlord is granted a monetary order for \$100.00.

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 30, 2016

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Residential Tenancy Branch