



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

OPL

### Introduction

This was the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for an order of possession based on a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to s. 49 of the Act.

Three individuals were named as landlords in the application. All three attended the hearing. A fourth individual, identified as another owner and landlord, also attended, and I have amended the application to include his name at his request and with the consent of the other landlords. Two of the individual landlords gave affirmed testimony on behalf of all of the landlords.

The landlords testified that they purchased property with a residence on it from the tenant, who had resided there for many years before selling it to them. They have rented the residence back to the tenant for approximately three years, and are now prepared to demolish the home and develop the property. The landlords further testified that the tenant has advised them that she does not wish to leave.

As the tenant did not attend the hearing, service of the Notice of Hearing dated November 29, 2016 and the landlords' Application dated November 28, 2016 was considered. One of the landlords testified that these materials were left in the tenant's mailbox, which is outside of a fenced yard. He further testified that the Notice of Hearing and the Application were not posted on the tenant's door because the residence is behind a locked fence to which the landlords do not have a key. He also testified that the materials were mailed to the tenant via Canada Post's regular mail service. The landlords are cautioned that standard mail is not an accepted method of service under s. 89. I consider that the tenant's mailbox qualifies as "another conspicuous place" under s. 89(2)(d) and that the tenant has therefore been served under this section. If I am mistaken in this I would in any event have found that the tenant has been sufficiently served pursuant to s. 71(2)(c) in light of the landlords' testimony that they checked the mailbox two days later to confirm the materials had been picked up, and that the tenant subsequently spoke with one of the landlords and acknowledged receipt orally. According to the testimony of the landlords, at this point she also said she was unwilling to leave.

### Issue(s) to be Decided

Are the landlords entitled to an order of possession based on the 2 Month Notice?

### Background and Evidence

As set out above, the residence in question was originally owned by the tenant. The landlords purchased the property from the tenant approximately three years ago, and have been renting it to her since then. The landlords testified that they bought the property as land developers.

There is no written tenancy agreement. The landlords were cautioned in the hearing that the landlord is responsible to ensure that there is a written tenancy agreement.

Under the terms of the oral tenancy agreement, rent is \$1,250.00 monthly and is due on the first of each month. The tenant has written cheques for rent since receiving the 2 Month Notice but the landlords have not cashed them. The landlords stated that they are not concerned about any arrears and are not seeking a monetary order. The cheques in evidence, which the landlords have written "VOID" across, are as follows:

September 16, 2016	\$625.00	Marked "September 16-30"
October 1, 2016	\$1,250.00	Marked "November 1-30 Rent"
October 12, 2016	\$2,957.00	Marked "July, August, and September 1-15 RENT"
October 20, 2016	\$1,250.00	Marked "October 1-31/16 RENT"

Also in evidence is a letter from the tenant to one of the landlords dated October 11, 2016 in which the tenant outlines amounts she claims are owing to her for a hot water tank and hydro. I make no finding on any amounts alleged to be owing in this letter.

The landlords testified that they served the 2 Month Notice, dated July 15, 2016, by posting it on the tenant's fence and by leaving a copy in the tenant's mailbox, outside of the fenced yard, on the same date. The 2 Month Notice has an effective date of September 30, 2016. The tenant has not filed an application to dispute the 2 Month Notice.

The landlords further testified that the tenant is 91 years old, that she has been unable to find another home to purchase, and that she does not appear to have any close relatives in British Columbia.

The landlords submitted letters from the tenant dated September 16 and 28, October 27, and December 26, 2016, in which she outlines her unsuccessful attempts to purchase another home.

The landlords testified that they brought another application for an order of possession in November, 2016, but that application was refused with leave to reapply because they had not

submitted the 2 Month Notice. They also testified that the tenant had never disputed the 2 Month Notice that she did not attend the prior hearing.

Lastly, the landlords testified that they did not have the necessary permits in place to demolish the residence in question. They said that this is because they had not felt comfortable entering the fenced property on which the residence is located to take the necessary steps, including erecting tree fencing, in order to request a demolition permit. They stated that they had made a development application and had entered into a servicing agreement with the City. They also stated that they had offered the tenant a townhome that they had built, but that she had refused their offer as she did not wish to live in a townhome.

### Analysis

Section 49(6) of the Act allows a landlord to end a month to month tenancy for certain specified reasons by giving notice to end the tenancy effective on a date not earlier than 2 months after the date the tenant receives the notice, and the day before the day in the month that rent is payable.

Section 49(6)(a) allows a landlord to end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish the rental unit. The landlords concede that they do not yet have the necessarily permits and approvals required by law.

However, this is not determinative here because s. 49(9) also states that, provided a notice complies with s. 52, a tenant who does not make an application for dispute resolution within 15 days of receipt of a notice to end tenancy, is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. I find that the landlords' 2 Month Notice complies with s. 52.

As set out above, the tenant was served with the 2 Month Notice on July 15, 2016. The tenant is deemed to have received the 2 Month Notice on July 18, 2016, 3 days after it was posted, pursuant to s. 90 of the Act. The tenant did not apply to dispute the 2 Month Notice. The 2 Month Notice has an effective date of September 30, 2016. The timing of her rental payments (the fact that she did not pay rent for July – September until October) suggests that the tenant may not have wished to dispute the 2 Month Notice until after she began having difficulty locating an alternative residence.

It is no doubt difficult for the tenant to find comparable home after having lived so many years in the one at issue. Nevertheless, the fact remains that the tenant did not apply to dispute the 2 Month Notice. Accordingly, she is conclusively presumed under the Act to have accepted that the tenancy ended on September 30, 2016, the effective date of the notice. The tenant and anyone on the premises were required to vacate the premises by that date. As this has not occurred, I find that the landlord is entitled to an order of possession.

As the tenant has attempted to pay rent and the landlords have been unwilling to accept it, and because she is 91 years old, I grant the order effective at 1:00 pm on January 31, 2017 rather than two (2) days from service.

### Conclusion

The landlord's application is allowed. I grant an order of possession to the landlords effective at 1:00 pm on January 31, 2017.

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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: January 16, 2017

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Residential Tenancy Branch