



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNR, 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 unpaid rent and damages pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend the hearing which lasted approximately 30 minutes. The landlord attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the landlord's 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") dated October 31, 2016 was served on the tenant by registered mail. The landlord provided a Canada Post tracking number as evidence of service. I find that the 2 Month Notice was deemed served in accordance with sections 88 and 90 of the *Act* on November 4, 2016, five days after posting.

The landlord testified that the landlord's application for dispute resolution dated January 17, 2017 was served on the tenant by registered mail on January 18, 2017. The landlord provided a Canada Post tracking number as evidence. I find that the landlord's application and evidence were deemed served on the tenant in accordance with sections 88, 89 and 90 of the *Act* on January 23, 2017, five days after mailing.

At the outset of the hearing the landlord made an application to amend the monetary amount of the award sought. The landlord testified that there has been a calculation error in the initial application and the actual amount sought is \$550.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, I amend the

landlord's Application to decrease the landlord's monetary claim from \$2,200.00 to \$550.00.

### 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 award for unpaid rent and damages?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This tenancy began in March, 2016. The monthly rent is \$1,100.00 payable on the first of the month. A security deposit of \$550.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. The tenant continues to reside in the rental unit at the time of the hearing.

The landlord testified that the rental property is being sold. The landlord provided copies of the Contract of Purchase and Sale as evidence. The landlord testified that no rent payment was collected from the tenant for January, 2017 pursuant to the tenant's entitlement to compensation under the *Act*. The landlord testified that the tenant did not move out on January 31, 2017, the corrected effective date of the 2 Month Notice. The landlord testified that the tenant has made no further payment of rent. The landlord is seeking \$550.00 for the period that the tenant has been residing in the rental unit after the end of the tenancy.

### Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the 15 days of service granted under section 49(8) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 2 Month Notice, January 31, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 2 Month Notice has passed, I issue a 2 day Order of Possession.

Section 57 of the Act provides in part:

57 (1) In this section:

...

“**overholding tenant**” means a tenant who continues to occupy a rental unit after the tenant’s tenancy has ended.

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

I accept the landlord’s undisputed testimony that the tenant continues to occupy the rental unit. Given the date of the hearing it is unlikely the landlord will be able to obtain possession of the rental until February 14, 2017. The tenant will have occupied the rental unit for half a month beyond the date the tenancy ended pursuant to the 2 Month Notice. Therefore, I issue a monetary award in the landlord’s favour for the equivalent of half a month’s rent, \$550.00.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant’s security deposit of \$550.00 in partial satisfaction of the monetary award issued in the landlord’s favour.

As the landlord’s application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. 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.

I issue a monetary order in the landlord’s favour in the amount of \$100.00 under the following terms, which allows the landlords to recover compensation from the overholding tenant, and the filing fee for their application:

Item	Amount
Overholding February, 2017	\$550.00

Filing Fee	\$100.00
Less Security Deposit	-\$550.00
<b>Total Monetary Order</b>	<b>\$100.00</b>

The tenant must be served with this Order as soon as possible. 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.

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: February 14, 2017

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Residential Tenancy Branch