



# 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 of property pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:25 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on January 19, 2017 a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. A registered mail tracking number was provided in support of service.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

### Issues

Is the landlord entitled to an order of possession for landlord's use of property?  
Is the landlord entitled to recover its filing fee?

### Background and Evidence

The tenancy for this 1 bedroom basement suite began approximately four years ago. The current monthly rent is \$450.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$225.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on December 30, 2016, she served the tenant with the 2 Month Notice to End Tenancy for Landlord's Use of Property by posting a copy to the door of the rental premises. A witnessed Proof of Service form of the Notice to End Tenancy was provided on file.

### Analysis

I am satisfied that the tenant was deemed served with the 2 Month Notice to End Tenancy for Landlord's Use of Property on January 2, 2017, three days after its posting, pursuant to sections 88 & 90 of the Act. I find the notice complies with the form and content requirements of section 52 of the Act.

Pursuant to section 49 of the Act, the tenant may make a dispute application within fifteen days of receiving the 2 Month Notice. If, as in the present case, the tenant does not make an application for dispute within fifteen days, the tenant is conclusively presumed to have accepted that the tenancy ended on the "**corrected**" effective date of the Notice.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

The notice issued by the landlord had an incorrect effective date of February 28, 2017. Subsection 49(2) of the Act requires a landlord to set an effective date to end the tenancy not earlier than 2 months after the date the notice is received by the tenant and the day before the day in the month that rent is payable under the tenancy agreement. In this case, as the tenant is not deemed to have received the Notice until January 2, 2017 (three days after it was posted), the earliest effective date for the 2 Month Notice would be March 31, 2017. Section 53 of the Act operates in this case to automatically change the effective date to **March 31, 2017**.

As the landlord's application was made prior to the effective date of the 2 Month Notice, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlord effective **March 31, 2017**. Should the tenant 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 15, 2017

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Residential Tenancy Branch