



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding

## DECISION

### Dispute Codes

MNR, OPL, MNSD, FF, O

### Introduction

This was the landlord's application under 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"), a monetary order, authorization to retain the security deposit, and recovery of the filing fee. At the outset of the hearing the landlord withdrew its request for "other" relief.

One of the tenants attended the hearing on behalf of both tenants. Two property managers attended on behalf of the landlord. The parties were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions, and to respond to the submissions of the other parties.

Service of the landlord's application and associated materials was not at issue. The tenant attending the hearing confirmed that both she and her co-tenant had received their own copies of the materials, and that her co-tenant was aware of the application but was unable to attend because he was working. Accordingly, I find that the attending tenant was sufficiently served pursuant to s. 89(1) of the Act, and that the co-tenant was sufficiently served pursuant to s. 71(2).

### Issue(s) to be Decided

Is the landlord entitled to an order of possession based on the 2 Month Notice?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to withhold some or all of the security deposit?

Is the landlord entitled to return of the application filing fee?

### Background and Evidence

There is no written tenancy agreement. It was agreed that the tenancy began in September of 2014 on a month to month basis, with monthly rent of \$700.00 due on the first of each month. A security deposit of \$250.00 remains in the landlord's possession.

It was also agreed that the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") on October 27, 2016. The tenants received the 2 Month Notice, which has an effective date of December 31, 2016, on October 27, 2016.

It was further agreed that the tenants have not applied to dispute the 2 Month Notice. After receiving it, they bought a trailer and started to make arrangements with a new landlord but those arrangements fell through. The tenants say that the arrangements fell through because their current building manager did not give them a good reference.

The tenant confirmed that they received one month's free rent under the 2 Month Notice. She also confirmed that the tenants have not paid rent for January, February, or March of 2017. She said that they tried to pay rent but the landlord would not accept it. The landlord's agent was not aware that this money could be accepted "for use and occupancy only." The tenant at the hearing also said that the tenants were unable to pay arrears in full at this time because they had purchased the trailer.

The landlord's agent said that the building is dangerous, that it contains mould and that water is coming through the light outlets. The tenant testified that she and her co-tenant were at one point offered the opportunity to repair the rental unit in exchange for one month's rent.

### Analysis

Section 49(6) of the Act allows a landlord to end a month to month tenancy for certain 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(9) says 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 landlord's 2 Month Notice complies with s. 52. The tenants received the 2 Month Notice on October 27, 2017. The tenants did not apply to dispute the 2 Month Notice. Accordingly, they are conclusively presumed under the Act to have accepted that the tenancy ended on December 31, 2016, the effective date of the notice. The tenants 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 a two (2) day order of possession. I grant the landlord a two (2) day order of possession rather than an order effective at the end of March for two reasons. First, the tenants could not bring their arrears up to date even if I were to order the landlord to accept them for use and occupancy only. Second, I accept the landlord's evidence that the rental unit is unsafe.

Sections 7 and 67 establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

It was agreed that the tenants owe \$700.00 for each of January, February, and March of this year. I therefore find that the landlord is entitled to \$2,100.00 in loss of rental income for these months.

As the landlord was successful in this application, I find that the landlord is also entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$250.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit of \$250.00 in partial satisfaction of the monetary claim.

Based on the above, I grant a monetary order in the landlord's favour in the total amount of \$1,950.00.

#### Conclusion

The landlord's application is allowed.

I grant the landlord a two (2) day order of possession. The tenants must be served with this order as soon as possible. Should the tenants 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 also grant the landlord a monetary order for \$1,950.00. The tenants must also be served with this order as soon as possible. Should the tenant fail to comply with this order, it 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 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: March 10, 2017

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Residential Tenancy Branch

