



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, O, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for landlord's use of property, pursuant to section 55;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 23 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that he personally served the tenant with the landlord's application for dispute resolution hearing package on March 27, 2017. He said that he went in person on his own to serve the tenant and then returned again on the same date to serve the tenant with a witness. The landlord provided a proof of service form, which is signed by his witness, indicating that the tenant was served in person with the landlord's application on March 27, 2017. In accordance with section 89 of the *Act*, I find that the tenant was served with the landlord's application on March 27, 2017.

The landlord testified that he served the tenant with the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 11, 2017 ("2 Month Notice") on the same date. He said that he went in person on his own to serve the tenant and then returned again on the same date with a witness present to serve the tenant by posting the notice to the door. The landlord provided a proof of service form which is signed by his witness, indicating that the tenant was served by posting to the door on January 11, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 2 Month Notice on January 14, 2017, three days after its posting.

At the outset of the hearing, the landlord confirmed that he applied for "other" unspecified remedies in order to prevent the tenant from requesting additional compensation above the one month free rent pursuant to the 2 Month Notice. I notified

the landlord that I could not adjudicate this relief because it is a future event that has not yet occurred and may not occur. Accordingly, this portion of the landlord's application is dismissed without leave to reapply.

### Issues to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of property?

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

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The tenant did not provide any written evidence for this hearing. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. The tenant's tenancy began on October 1, 1995 with the former landlord. The landlord bought the rental unit in August 1996 and continued the tenancy with the tenant. The landlord did not sign a new written tenancy agreement with the tenant, he just continued the former written tenancy agreement between the tenant and the former landlord. The landlord confirmed that he had a copy of the original tenancy agreement in front of him during the hearing, but he did not provide a copy with his application. Monthly rent in the amount of \$670.93 is payable on the first day of each month. The former written tenancy agreement did not indicate that a security deposit was paid to the former landlord. The landlord claimed that he did not receive a security deposit when he purchased the rental unit from the former landlord. The tenant continues to reside in the rental unit, which is a one-bedroom unit in the basement of a house, while other tenants occupy the upper floor, which is a three-bedroom unit.

The landlord provided a copy of the 2 Month Notice, which indicates an effective move-out date of April 1, 2017. The landlord identified the following reason for seeking an end to this tenancy on page 2 of the notice:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

The landlord testified that he requires the rental unit for his own personal use. He said that he wanted to move back into the unit last year, but waited because he wanted to

give the tenant additional time to move. He said that he is now retired so he has more time on his hands and wants to move to the area in order to enjoy retirement. He said that the rental unit has one bedroom so it is a good size because he will be living alone and he does not need the larger three-bedroom main floor unit on the upper floor of the house because it is too much space for him.

The landlord said that he has not had any issues with the tenant during this tenancy. He stated that they get along well and he has been able to serve the tenant with paperwork in person. He claimed that he has not issued any other notices to end tenancy to the tenant. He maintained that the tenant's rent was last increased in September 2016. The landlord stated that he does not intend to live with anyone else in the rental unit and he does not plan to rent it out to other tenants.

The landlord explained that he signed a written agreement with the tenant on March 3, 2017, indicating that the tenant could have an extra month to vacate the rental unit until May 1, 2017. The landlord provided a copy of this agreement with his application. He said that he did not want the tenant to have to move when there was still snow on the ground in April 2017, so as long as the tenant was of good behavior, he could stay until May 1, 2017. He claimed that he included good behavior provisions in the agreement only as a prudent precaution. He explained that he had received some complaints from other tenants about the tenant collecting cans and bottles on the property but that it was not a big deal, he just told the tenant to be careful about that. He stated that he did not reinstate the tenancy, he only granted a one-month limited time extension to the tenant.

### Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.*

I accept the landlord's testimony that he requires the rental unit for his own personal use because he is retired and wants to enjoy his time off and the area where the rental unit is located. I accept that the landlord needs this rental unit rather than the main floor of the house because it is a smaller space since he will be living alone. I find that the landlord did not reinstate the tenancy by signing an agreement to grant the tenant one extra month to move, this was done to provide the tenant with more time because of the snow in the area. I find that the landlord did not have any other improper motives for ending this tenancy, which has been ongoing for over 20 years.

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant was deemed to have received the 2 Month Notice on January 14, 2017. The tenant did not dispute the notice by filing an application. Therefore, the tenant is presumed to have accepted that the tenancy ended on the effective date of the notice, April 1, 2017.

Based on a balance of probabilities and for the above reasons, I find that the landlord intends in good faith to occupy the rental unit. I find that the landlord has met his onus of proof under section 49(3) of the *Act*. I find that the landlord's 2 Month Notice complies with section 52 of the *Act*.

The landlord confirmed that he signed an agreement to allow the tenant to stay in the unit until May 1, 2017 and he was prepared to abide by this agreement. Accordingly, I grant an **Order of Possession to the landlord effective at 1:00 p.m. on May 1, 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.

As the landlord was mainly successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

I grant an **Order of Possession to the landlord effective at 1:00 p.m. on May 1, 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.

I issue a monetary Order in the landlord's favour in the amount of \$100.00 against the tenant, to account for the recovery of the filing fee since the landlord does not hold a security deposit from the tenant. The landlord is provided with a monetary order in the above terms and 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.

The landlord's application for "other" unspecified remedies is dismissed without leave to reapply.

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: April 27, 2017

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Residential Tenancy Branch