



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, MNSD

### 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; and
- authorization to retain all or a portion of the tenants' security deposit pursuant to section 38.

The tenants did not attend this hearing which lasted approximately 10 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice"), dated February 28, 2017 and providing an end of tenancy date of May 1, 2017 was served on the tenants by posting on the rental unit door on February 28, 2017. I find that the tenants were deemed served with the landlord's 2 Month Notice on March 3, 2017, three days after posting, in accordance with sections 88 and 90 of the *Act*.

The landlord testified that the landlord's application for dispute resolution dated May 6, 2017 was served personally on both of the tenants on that same date. In accordance with section 89 of the *Act*, I find that the tenants were duly served with the landlord's application package and evidentiary materials on May 6, 2017.

### Issue(s) to be Decided

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

Is the landlord entitled to retain all or part of the tenants' security deposit?

### Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This periodic tenancy began in February, 2014. The current monthly rent is \$700.00 payable on the first of the month. A security deposit of \$350.00 was paid by the tenants at the start of the tenancy and is still held by the landlord. The tenants continue to reside in the rental unit at the time of the hearing.

The landlord provided a copy of the 2 Month Notice to End Tenancy into written evidence. The landlord testified that the reason for ending this tenancy is that she intends to perform repairs and renovations to the rental unit when the tenants have vacated.

The landlord testified that the tenants were provided the equivalent of one month's rent under the tenancy agreement by withholding half of the rent for each of the months of April and May, 2017. The landlord said that the tenants have not made any payment for June, rent.

### 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 tenants have 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 tenants are 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, May 31, 2017.

The landlord's 2 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and provides the reason for the tenancy being ended. 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.

I find that the tenants were obligated to pay rent in the amount of \$700.00. I accept the landlord's testimony that the tenants have failed to pay the rent for the month of June, 2017 during which time they remain in the rental unit. In accordance with sections 67 and 38 of the *Act*, I allow the landlord to retain the tenants' \$350.00 security deposit.

Conclusion

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

The landlord may retain the tenants' security deposit of \$350.00.

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: June 16, 2017

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Residential Tenancy Branch