



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE BENCHMARK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPL, MNDC, 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;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail. The landlord's agent (the landlord) provided affirmed testimony that the first, second and third documentary evidence package(s) were to be excluded as the tenant was not served. Both parties confirmed that the tenant was served with the landlord's fourth documentary evidence package via Canada Post Registered Mail on July 18, 2017. The tenant confirmed that no documentary evidence was submitted. Neither party raised any issues with service. I accept the affirmed evidence of both parties and find that the tenant has been properly served as per sections 88 and 89 of the Act.

The landlord also files an amendment to the application for dispute adding a monetary claim. The tenant provided affirmed testimony that no such amendment has been received. The landlord claimed that the tenant was served via Canada Post Registered Mail, but has failed to provide any documentary evidence in support of service. I find that the landlord has failed to provide sufficient evidence that she properly served the tenant with the amendment and as such, dismiss the amendment to the application with leave to reapply for lack of service.

The hearing shall proceed on the landlord's original application for an order of possession for landlord's use of property.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for landlord's use of property?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that the landlord served the tenant with a 2 Month Notice to End Tenancy issued for Landlord's Use of Property (the 2 Month Notice) on July 18, 2017 by Canada Post Registered Mail on July 18, 2017. The landlord provided evidence via a copy of the Canada Post Customer Receipt and tracking label as confirmation of service. The tenant acknowledged receiving the 2 Month Notice. The 2 Month Notice sets out an effective end of tenancy date of September 30, 2017 and one reason listed as:

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 claimed that the tenant has not disputed the 2 Month Notice.

The tenant confirmed that no application for dispute was filed as he tried to add an amendment to another application for dispute, but had failed to properly file it.

Analysis

Section 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

I find based upon the undisputed evidence of both parties that the tenant was properly served with the 2 Month Notice dated July 18, 2017 via Canada Post Registered Mail on July 18, 2017.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. Subsection 49(9) states:

If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

The tenant provided undisputed affirmed evidence that he did not file an application for dispute of the 2 Month Notice. As such, I find that the tenant has conclusively presumed to have accepted that the tenancy ended on the effective date of the 2 Month Notice on September 30, 2017. As the effective date has now passed, I grant the landlord a two-day order of possession.

### Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: November 10, 2017

---

Residential Tenancy Branch