



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL FF

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of Possession pursuant to section 49 of the *Act* for Landlord's Use of Property; and
- a return of the Filing Fee pursuant to section 72 of the *Act*.

While the landlord attended the hearing by way of conference call, the tenant did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") was affixed to the door of the rental unit and given to the tenant in person on July 28, 2017. A copy of the 2 Month Notice was provided as part of the evidentiary package. I find that in accordance with sections 88 and 90 of the *Act* the tenant was deemed served with this Notice on July 31, 2017, three days after its posting.

The landlord stated that the tenant was served with the Landlord's Application for Dispute Resolution hearing package ("Landlord's Application") in person on October 6, 2017. In addition, a proof of service document was provided to the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Landlord's Application on October 6, 2017.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Can the tenant recover the filing fee?

### Background and Evidence

The landlord stated that this tenancy began on January 1, 2012. Rent was \$630.00 per month and a security deposit of \$300.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said that he issued a 2 Month Notice to End tenancy in July 2017 because extensive renovations were required in the rental unit. He explained that these involved breaking the floor and subfloor, and required an empty rental suite. The landlord said that the rental unit had two other units on the premises which had been cleared to allow for these renovations to take place.

The tenant did not dispute this Notice to End Tenancy and did not appear at the hearing.

### Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property 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 tenant has failed to file his application for dispute resolution within the 15 days of service granted under section 49(9) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(9)(a) of the *Act* to have accepted that the tenancy ended on the effective date of the 2 Month Notice, September 30, 2016.

I am therefore issuing an Order of Possession to the landlord effective 2 days after service on the tenant.

As the landlord was successful in his application, he may recover the \$100.00 filing fee from the tenant. Pursuant to section 72 of the *Act*, I allow the landlord to retain \$100.00 from the tenant's security deposit.

### Conclusion

**I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant.** The landlord is provided with formal Orders in the

above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I allow the landlord to retain \$100.00 from the tenant's security deposit.

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: December 18, 2017

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Residential Tenancy Branch