



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, 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; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 27 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 the tenants were each served separately with the landlord's application for dispute resolution hearing package on October 18, 2017, both by way of registered mail. The landlord provided two Canada Post receipts and tracking numbers with his application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on October 23, 2017, five days after their registered mailings.

The landlord testified that the tenants were each served separately with the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated September 19, 2017 ("2 Month Notice") on the same date. He said that one tenant was served by registered mail and provided a Canada Post receipt and tracking number with his application. He said that the other tenant was served by leaving a copy in the tenants' mailbox and provided a signed and witnessed proof of service. In accordance with sections 88 and 90 of the *Act*, I find that one tenant was deemed served with the landlord's 2 Month Notice on September 24, 2017, five days after its registered mailing and the other tenant was deemed served with the landlord's 2 Month Notice on September 22, 2017, three days after leaving it in the tenants' mailbox.

### 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 principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began with the former landlord on May 22, 2016 for a fixed term until November 30, 2016, after which the tenants were required to vacate the rental unit. The landlord purchased the building in May 2017 and continued the tenants' tenancy on a month-to-month basis without signing a new written tenancy agreement. Monthly rent in the amount of \$875.00 is payable on the first day of each month. The original written tenancy agreement indicates that a security deposit of \$437.50 was paid to the former landlord and the landlord continues to retain this deposit. The landlord provided a copy of the original written tenancy agreement. The tenants continue to reside in the rental unit.

The landlord provided a copy of the 2 Month Notice, which indicates an effective move-out date of November 30, 2017. The landlord identified the following reason for seeking an end to this tenancy on page 2 of the notice:

- *The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.*

The landlord testified that he requires the tenants' rental unit to be vacant because he needs to complete renovations. He stated that he does not require permits or approvals because he is not completing any structural renovations. He said that he has already renovated other rental units in the same building and that the tenants' rental unit is next. He stated that the tenants' entire rental unit will be renovated.

The landlord provided the red seal certificate and business license of the carpenter who will be completing the renovations, as well as a letter, dated December 2, 2016, signed

by the carpenter. The letter indicates that two other rental units have already been renovated in the same building, another is almost finished, and the tenants' unit next on the list. The planned renovations outlined in the letter, which the landlord confirmed, are new flooring, new interior paint, new windows, new window trim and baseboard, new kitchen cabinets, counters and sinks, and new bathroom cabinets, counters, sinks, toilets and shower.

### Analysis

Subsection 49(6)(b) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires it to be vacant.

*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 intends, in good faith, to renovate the rental unit that requires it to be vacant. I accept that the landlord does not require permits or approvals because he is not completing any structural renovations. The landlord provided a copy of the red seal certificate and business license of the carpenter that will be completing the renovations as well as a letter of the renovations to be done to the rental unit.

According to subsection 49(8) of the *Act*, tenants may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenants

received the notice. The tenants did not dispute the notice by filing an application. Therefore, the tenants are presumed to have accepted that the tenancy ended on the effective date of the notice, November 30, 2017.

Based on a balance of probabilities and for the above reasons, I find that the landlord intends in good faith to renovate the rental unit. I find that the landlord has met his onus of proof under section 49(6)(b) of the *Act*. I find that the landlord's 2 Month Notice complies with section 52 of the *Act*.

I find that the landlord did not reinstate the tenants' tenancy by accepting December 2017 rent because he testified that he provided a rent receipt to the tenants indicating that the rent was being accepted for use and occupancy only. The landlord provided a copy of this receipt with his application.

The landlord confirmed that the tenants had paid rent for the month of December 2017. Accordingly, I grant an **Order of Possession to the landlord effective at 1:00 p.m. on December 31, 2017**. Should the tenant(s) 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 stated that he provided the tenants with a cheque for a refund of September 2017 rent, to allow for the one month free rent compensation under section 51 of the *Act* and the 2 Month Notice. He claimed that the tenants refused the cheque and sent it back to the landlord. He stated that he understood that he is still required to provide the tenants with one month's free rent compensation as per section 51 of the *Act* and the 2 Month Notice.

As the landlord was fully successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenants. In accordance with section 72 of the *Act*, I order the landlord to deduct \$100.00 from the tenants' security deposit of \$437.50, in full satisfaction of the monetary award of the filing fee. The remainder of the tenants' security deposit of \$337.50 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

## Conclusion

I grant an **Order of Possession to the landlord effective at 1:00 p.m. on December 31, 2017**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to deduct \$100.00 from the tenants' security deposit of \$437.50, in full satisfaction of the monetary award of the filing fee. The remainder of the tenants' security deposit of \$337.50 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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 26, 2017

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Residential Tenancy Branch