



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL

### 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 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:36 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:00 a.m. The landlord, the landlord's agent R.M. and a family member assisting the landlord attended the hearing. The landlord's agent R.M. spoke on behalf of the landlord and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the landlord's application for dispute resolution and evidence was sent to the tenant by Canada Post registered mail on February 22, 2018. This testimony was supported by a Canada Post registered mail receipt with tracking number that was submitted as documentary evidence by the landlord. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on February 27, 2018, five days after its mailing.

### Issue(s) to be Decided

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

### Background and Evidence

The landlord's agent provided undisputed testimony regarding the following facts. This month-to-month tenancy began on October 1, 2015. The current monthly rent is \$700.00 payable on the first day of the month. A security deposit of \$320.00 was paid at the start of the tenancy; however, the landlord's agent testified that the tenant and the landlord agreed in writing to allow the tenant to use the \$320.00 security deposit in partial fulfillment of her rent for the month of November 2017. Therefore, the landlord no longer holds the security deposit. The tenant continues to reside in the rental unit at the time of the hearing.

The landlord's agent testified that a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice), was personally served on the tenant by the landlord on August 17, 2017. The landlord's agent further testified that the tenant signed the Two Month Notice in acknowledgment of having been served the notice. The landlord has submitted a copy of the Two Month Notice as documentary evidence in support of this testimony.

The landlord's agent provided undisputed testimony that the tenant was provided with two months of notice given that the effective date to move out on the notice was stated as October 31, 2017; and that the tenant did not pay rent for the month of October 2017 in fulfillment of the requirement to provide the tenant with one month's rent as compensation pursuant to the *Act*.

### Analysis

In considering this matter, I have reviewed the landlord's Two Month Notice to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the Two Month Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

The landlord provided sworn testimony that the Two Month Notice was personally served on the tenant on August 17, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Two Month Notice on August 17, 2017.

I accept the evidence before me that the tenant failed to dispute the Two Month Notice within the 15 days granted under section 49(8) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the stated effective date of the Two Month Notice, October 31, 2017. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

### Conclusion

I grant an Order of Possession to the landlord to be served on the tenant and to be effective on or after April 30, 2018. Should the tenant 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.

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, 2018

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Residential Tenancy Branch