



# 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;
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 22 minutes. The landlord and his English language "interpreter" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his interpreter, who is his daughter, had permission to assist him at this hearing.

The landlord testified that he personally served the tenant with the landlord's application for dispute resolution hearing package on March 19, 2018, at the rental unit. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord's application on March 19, 2018.

The landlord testified that he personally served the tenant with the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 8, 2018 ("2 Month Notice") on the same date. The interpreter testified that she witnessed the service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was personally served with the landlord's 2 Month Notice on January 8, 2018.

### 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 tenant did not provide any written evidence for this hearing. The principal aspects of the landlord's claims and my findings are set out below.

The interpreter testified regarding the following facts. This tenancy began on December 15, 2011 for a one year fixed term after which it became a month-to-month tenancy. Monthly rent in the amount of \$750.00 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties but a copy was not provided for this hearing. The tenant continues to reside in the rental unit, which is a two-bedroom, one-bathroom unit in the basement of a house, while the landlord occupies the main floor and upper floor of the same house, which has five bedrooms and two bathrooms total on those two floors.

The landlord provided a copy of the 2 Month Notice, which indicates an effective move-out date of March 15, 2018. The landlord identified the following reason for seeking an end to this tenancy on page 2 of the notice:

- *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 interpreter testified that the landlord requires the rental unit for his son to move in. She stated that the landlord has health issues, he is 68 years old, and his wife works so he wants to avoid being home alone during the day. She stated that it is a better option than hiring home care for the landlord. She claimed that even though the landlord occupies two upper levels of the home with plenty of bedroom space, the landlord's son is 39 years old, may have his girlfriend move in with him and wants his own space and independence, as he does not want to share the same space as his parents.

The landlord said that he has not had any issues with the tenant during this tenancy. He claimed that he issued two or three notices to end tenancy for unpaid rent to the tenant in the distant past but he has also allowed the tenant to pay rent late and not to pay the full rent if he does not have the money. He maintained that the tenant's rent was only increased once, last year, by \$25.00 per month.

## Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

*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 requires the rental unit for his son to move in. I accept that his son wants his own independent space to live, while also being able to take care of the landlord with health issues. I find that the landlord does not have any other improper motives for ending this tenancy, despite the only rent increase imposed last year and a few notices to end tenancy issued some time ago. This tenancy has been ongoing for seven years and the landlord said that he gave the tenant more time to move out as per the dates on the 2 Month Notice.

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on January 8, 2018. The tenant did not dispute the notice by filing an application. Therefore, the tenant is presumed to have accepted that the tenancy ended on the corrected effective date of the notice, March 31, 2018.

Based on a balance of probabilities and for the above reasons, I find that the landlord's son intends in good faith to occupy the rental unit. I find that the landlord has met his onus of proof under section 49(3) of the *Act*. I find that the landlord's 2 Month Notice complies with section 52 of the *Act*.

Accordingly, I grant an Order of Possession to the landlord effective two days after service on the tenant, since the corrected effective date of the notice has now passed. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I note that the landlord is also obligated to provide the tenant with at least one month's free rent compensation pursuant to section 51 of the *Act* and the 2 Month Notice.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

#### Conclusion

I grant an **Order of Possession to the landlord effective two days after service on the tenant**. Should the tenant 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 retain \$100.00 from the tenant's security deposit of \$375.00 in full satisfaction of the monetary award for the filing fee. The remainder of the tenant's security deposit of \$275.00 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: May 31, 2018

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Residential Tenancy Branch