



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, wherein the Landlord requested an Order of Possession based on a 2 Month Notice to End Tenancy for Landlord's Use issued on June 26, 2018 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on October 22, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

The parties also confirmed that the Tenant vacated the rental unit on September 15, 2018 such that an Order of Possession was no longer required.

### Issue to be Decided

1. Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

### Background and Evidence

The parties confirmed that monthly rent was \$1,000.00 per month.

The Landlord issued the Notice on June 26, 2018. A copy of the Notice was provided in evidence and which confirmed that the effective date of the Notice was September 1, 2018. The Tenant did not apply to dispute the Notice and vacated the rental unit on September 15, 2018.

The Landlord confirmed the Tenant paid rent for July and August 2018. The Tenant was not provided with one month's compensation pursuant to section 51 of the *Act*.

The Landlord applied for Dispute Resolution on September 10, 2018.

### Analysis

After consideration of the evidence and testimony of the parties and on a balance of probabilities I find as follows.

Although the Tenant vacated the rental unit on September 15, 2018, this was after the effective date of the Notice of September 1, 2018. When the effective date passed, the Landlord was required to make an application for dispute resolution in order to regain possession of the rental unit.

I therefore find the Landlord is entitled to recover the \$100.00 filing fee.

The parties confirmed that although the Tenant received a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Act* she was not provided compensation equivalent to one months' rent. The parties are reminded of the requirements of section 51 of the *Act* which reads as follows:

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Tenant is at liberty to apply for monetary compensation from the Landlord and is further reminded of the strict limitation imposed by section 60 of the *Act* which reads as follows:

**60** (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

### Conclusion

The Tenant vacated the rental unit such that an Order of Possession was not required.

The Tenant vacated the rental unit after the effective date of the Notice such that the Landlord's application for an Order of Possession was necessary at the time. As such he is entitled to recover the \$100.00 filing fee.

The Landlord is granted a Monetary Order in the amount of \$100.00. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court, Small Claims Division.

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: October 22, 2018

---

Residential Tenancy Branch