



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession on the basis of the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that on October 22, 2018, they received the 2 Month Notice sent by the landlord by registered mail on October 9, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As per sections 88 and 90 of the *Act*, the 2 Month Notice was deemed served on October 14, 2018, the fifth day after its registered mailing. As the tenant confirmed that they received a copy of the tenant's dispute resolution hearing package and written evidence package sent by the landlord by registered mail on November 20, 2018, I find that the tenant was duly served with this package in accordance with sections 88 and 89 of the *Act*. The tenant did not provide any written evidence for this hearing.

### Issues(s) to be Decided

Is the landlord entitled to end this tenancy on the basis of the 2 Month Notice and to obtain an Order of Possession? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This month-to-month tenancy began on or about May 2006. No written tenancy agreement is in place for this tenancy. The current monthly rent is set at \$350.00, payable in advance on the first of each month. There is no security deposit for this tenancy.

The landlord's 2 Month Notice, entered into written evidence by the landlord, identified the following reasons for seeking an end to this tenancy by December 31, 2018:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The tenant did not apply to cancel the landlord's 2 Month Notice. The landlord maintained that his son is planning to move into this rental unit.

The parties agreed that the landlord has accepted payments of \$350.00 for both November and December 2018. The landlord understood that the tenant is entitled to a payment of \$350.00, the equivalent of one month's rent for this tenancy, pursuant to section 51(1) of the *Act*, as a result of the tenant having received the 2 Month Notice from the landlord.

### Analysis

Section 49(8) of the *Act* provides that upon receipt of a 2 Month Notice to end tenancy the tenant may, within fifteen 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 an application for dispute resolution within fifteen days of having been deemed to have been served with the landlord's 2 Month Notice. Accordingly, I find that the tenant is conclusively presumed under section 49 (9) of the *Act* to have accepted that the tenancy ends on the effective date of the 2 Month Notice, December 31, 2018, and requires the tenant to vacate the rental premises by that date

Section 49(7) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]." I am satisfied that the landlord's 2 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession, which must be served on

the tenant. This Order of Possession takes effect by 1:00 p.m. on December 31, 2018, the effective date of the 2 Month Notice.

Since the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee from the tenant.

### Conclusion

I allow the landlord's application to end this tenancy based on the 2 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on December 31, 2018. 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 issue a monetary Order in the landlord's favour in the amount of \$100.00, to enable the landlord to recover the filing fee from the tenant. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 17, 2018

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Residential Tenancy Branch