



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KILLAM INTERNATIONAL LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPL, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on November 28, 2018 (the "Application"). The Landlord applied for an order of possession after serving a 2 Month Notice to End Tenancy for Landlord's Use of Property dated November 7, 2018 to the Tenant (the "2 Month Notice"), pursuant to the *Residential Tenancy Act* (the "*Act*").

The Landlord's agent D.H., as well as the Tenant and the Tenant's representative K.M. attended the hearing. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, D.H. advised that the Tenant was served with the Application package and documentary evidence by registered mail. K.M. acknowledged receipt of the package on behalf of the Tenant.

The Tenant submitted documentary evidence in response to the Application. According to K.M., it was served on the Landlord in person. D.H. acknowledged receipt.

No issues were raised during the hearing with respect to service and receipt of the above documents. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on the 2 Month Notice for Landlord's Use of the Property, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to recovery the Filing Fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

A tenancy agreement was submitted into evidence confirming the tenancy began on September 1, 2002. Rent in the amount of \$1,954.55 was due to be paid to the Landlord by the first day of each month. A rent increase which took effect on January 1<sup>st</sup>, 2019 increased the rent owed to \$2,003.41. A security deposit in the amount of \$647.00 was paid to the Landlord.

The Landlord served the 2 Month Notice to the Tenant on November 7, 2018 by mail. According to Section 90 of the *Act*, the Tenant was deemed to have received the Notice 5 days after its mailing. The Landlord submitted a copy of the 2 Month Notice dated November 7, 2018 into evidence. The Landlord indicated that the reason for the Two Month Notice was;

*"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 Tenant did not apply to cancel the Landlord's 2 Month Notice. Instead, she provided the Landlord with a written notice dated December 27, 2018 indicating that she will be vacating her rental unit on January 6, 2019.

Both the Landlord's Agent D.H. and Tenant's representative K.M. confirmed that the tenancy ended on January 6<sup>th</sup>, 2018 prior to the effective date of the 2 Month Notice which directed the Tenant to vacate the rental by January 31, 2019. K.M. confirms that the Tenant moved out of the rental unit and returned the keys to the Landlord. D.H. had not yet confirmed that the keys had been returned, therefore, was still seeking an order of possession.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(8) of the *Act* provides that upon receipt of a 2 Month Notice 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 Two Month Notice, January 31, 2019.

I find that the tenancy ended on January 6, 2018 after the Tenant vacated the rental unit, which was permitted under Section 50 of the *Act*.

The Landlord made an Application on November 28, 2018 for an Order of Possession based on the Two Month Notice dated November 7, 2018. At that time, the Landlord had no indication that the Tenant was going to vacate the rental unit prior to the effective date on the notice.

I find that the Landlord is still entitled to an order of possession as D.H. could not yet confirm if the keys were returned to the Landlord.

I find that the Landlord is not entitled to the recovery of their filling fee due to the fact that the Tenant has complied with the 2 Month Notice.

### Conclusion

Pursuant to section 55(2) of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. The order of possession may be filed in 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: January 09, 2019

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Residential Tenancy Branch