



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEW CHELSEA SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** OPQ FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for:

- an Order of Possession as the tenant no longer qualifies for the subsidized rental unit pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlord's agents attended the hearing by way of conference call, the tenant did not. The landlord's agent SV ("landlord") testified on behalf of the landlord on this hearing. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package and evidence on April 3, 2019 by way of registered mail. The landlord provided a tracking number in their evidence. In accordance with sections 88, 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's application and evidence on April 8, 2019, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 2 Month Notice to End Tenancy, dated December 5, 2018 ("2 Month Notice"), on December 5, 2018 by way of registered mail. The effective date on the 2 Month Notice is February 28, 2019. The landlord provided the tracking number in their evidence. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the landlord's 2 Month Notice on December 10, 2018, five days after mailing.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover their filing fee for this application?

### **Background and Evidence**

This month-to-month tenancy began on February 14, 2014. The tenancy is for subsidized family housing. Market rent is currently set at \$1,417.00, with the tenant's portion currently set at \$550.00 per month. The landlord collected a security deposit of \$690.00, which the landlord still holds.

In August of 2018, the landlord discovered that the tenant's children were no longer residing with her, which is a condition of the subsidized rental. The landlord followed up with inspections to confirm this, and discovered that the tenant's children were no longer in her care. The landlord included in their evidentiary materials photos taken during the inspections, as well as other documentary materials in support of their application such as statements by staff.

The landlord served the tenant with a 2 Month Notice on December 5, 2018 as the tenant no longer qualifies for the subsidized rental unit. As the tenant has not moved out, or disputed the 2 Month Notice, the landlord is seeking an Order of Possession, as well as recovery of the filing fee.

### **Analysis**

A copy of the 2 Month Notice was submitted by the landlord for this hearing, and I find that the landlord's 2 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 49.1(5) of the *Act* provides that upon receipt of a notice to end tenancy for ceasing to qualify for the rental unit, 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 the fifteen days of service granted under section 49.1(6) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 49.1(6) of the *Act* to have accepted that the tenancy ended on the effective date of the 2 Month Notice, February 28, 2019.

In this case, this required the tenant and anyone on the premises to vacate the premises by February 28, 2019. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

The landlord continues to hold the tenant's security deposit of \$690.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit in partial satisfaction of the monetary claim.

**Conclusion**

I find that the landlord is entitled to an Order of Possession. I find that the landlord's 2 Month Notice is valid and effective as of February 28, 2019.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the filing fee for this application.

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 14, 2019

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Residential Tenancy Branch