



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL-4M, FF

### Introduction

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

- an order of possession for landlord's use of property pursuant to section 55;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The landlord, W.B. attended the hearing on behalf of S.B. (the landlords) and provided testimony. Both tenants attended the hearing and provided testimony.

Extensive discussions over a 30 minutes period with both parties revealed that the landlords served the tenants with the notice of hearing package and the 1<sup>st</sup> submitted documentary evidence via Canada Post Registered Mail on March 30, 2019. The tenants confirmed receipt in this manner. The landlords stated that the second late evidence package was served to the tenants in person on May 10, 2019. The tenants confirmed receipt of this package in this manner. The tenant, B.C. "skimmed" through it. The tenant, C.T. did not review the material. The tenants served the landlord with all of their submitted documentary evidence in person on May 2, 2019. The landlords confirmed receipt as claimed. The tenants have raised the issue that the landlord's late evidence was provided late. The landlord stated that he had no explanation of why the package was submitted late.

I accept the undisputed testimony of both parties and find that both parties have been sufficiently served with the notice of hearing package, the landlord's 1<sup>st</sup> documentary evidence submission and the tenants combined documentary evidence as per section 90 of the Act.

As for the landlord's late evidence submission, I accept and allow. Although both parties confirmed that the landlord submitted late documentary evidence on May 10, 2019 to the tenants, the landlord provided no explanation of its late submission. The tenants confirmed receipt and stated that only, the tenant, B.C. had "skimmed" through the material. The tenant, C.T. did not review it. On this basis, I allow the late submission of evidence as neither tenant has noted any issue in responding to the late submission. The tenants are deemed sufficiently served as per section 90 of the Act. I note that during the hearing, none of this late evidence submission was referred to by the landlord or the tenant.

### Issue(s) to be Decided

Are the landlords entitled to an order of possession pursuant to section 55 of the Act?  
Are the landlords entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlords' claim that a 4 month notice to end tenancy for Renovation (the 4 month notice) dated November 5, 2018 was served in person to the tenants on November 5, 2018. The 4 month notice provides for an effective end of tenancy date of March 31, 2019 and stated reason as:

Perform renovation or repairs that are so extensive that the rental unit must be vacant.

The notice provides for the planned and details of work:

*Renovating the kitchen, bathroom, stairway, drywall replacement, painting and exterior.*

*Replacing cabinet, countertops, floor, appliances. Cabinet, bathtub, toilet, tiles, lighting,... new carpet. New Drywall on the ceilings, kitchen, living room, bedrooms (water damage). Repainting whole house, walls, ceilings, trim, doors.*

The tenants confirmed receipt of the 4 month notice dated November 4, 2018 as claimed by the landlords. Both parties confirmed the details and content of the submitted copy as that served to the tenants.

The tenants stated that B.C. was unemployed as of October 30, 2018 and that the tenants were unable to locate a new tenancy. The tenants also argued that they believed that they could argue the contents of the 4 month notice in the dispute resolution hearing. The tenants stated that they “think” the landlord will not renovate/repair the rental unit and will just raise the rent. The tenants referred to a text message exchange between the two parties in which the landlords had offered to mutually resolve the issue, but confirmed that no offers were accepted.

### Analysis

Subsection 49(6) of the Act sets out that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair that requires the rental unit to be vacant.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord’s use by making an application for dispute resolution within thirty days after the date the tenant receives the notice. Subsection 49(9) states:

If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

In this case, both parties confirmed that the landlords served the tenants with the 4 month notice dated November 5, 2018 in person on November 5, 2018. The tenants confirmed that they did not apply for dispute resolution to dispute the 4 month notice dated November 5, 2018. The tenants provided undisputed testimony that they question the validity of the 4 month notice, yet did not apply for dispute.

As such, I find that the landlord has established a claim for an order of possession as a result of the 4 month notice dated November 5, 2018 pursuant to section 49(6). The tenants failed to make an application for dispute of the 4 month notice and as a result is conclusively presumed to have accepted that the tenancy was at an end as per section 49(8)(b) and 49(9) of the Act on March 31, 2019. The landlord is granted an order of

possession effective 2 days after upon the tenants being served as the effective date has now passed.

The landlords are also entitled recovery of the \$100.00 filing fee.

### Conclusion

The landlords are granted an order of possession and a monetary order for \$100.00.

These orders must be served upon the tenants. Should the tenants fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial 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: May 14, 2019

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Residential Tenancy Branch