



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “*Act*”) for an Order of Possession based on a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”).

The Landlord was present for the teleconference hearing while no one called in for the Tenant during the approximately 20 minutes that the teleconference line was monitored. The Landlord was affirmed to be truthful in her testimony and stated that the Tenant was served with the Notice of Dispute Resolution Proceeding package and a copy of her evidence by xpress post.

The Landlord stated that the mail was unclaimed and returned to her. She provided a copy of the receipt into evidence and the tracking number is included on the front page of this decision. The Landlord also submitted a photo of the envelope showing that it was returned to her as ‘unclaimed’. I accept the testimony and evidence before me that the package was unclaimed. However, despite not claiming the mail, I find that the Tenant was served in accordance with Sections 88 and 89 of the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

### Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a Two Month Notice to End Tenancy for Landlord’s Use of Property?

### Background and Evidence

The Landlord stated that the Tenant is a family member. She purchased the home with the intent for the Tenant to rent the unit and stated that the parties entered into a verbal tenancy agreement when the tenancy started in September 2017. The Landlord stated that the agreement was for the Tenant to pay her \$700.00 on the first day of each month. She stated that no security deposit or pet damage deposit was paid.

The Landlord stated that her current landlords have plans to sell the rental unit where the Landlord resides. Therefore, she has made plans to move into the rental unit as soon as possible and after she completes some work on the rental unit. Therefore, the Landlord stated that she served the Tenant with a Two Month Notice on April 30, 2019 by both email and by regular mail. The Landlord stated that she is aware the Tenant received the Two Month Notice as the Tenant advised her that the effective end of tenancy date on the notice should have been July 31, 2019 not June 30, 2019 as stated on the Two Month Notice.

The Landlord stated that she called the Residential Tenancy Branch and realized that the Tenant was correct, and the notice should have been effective July 31, 2019 instead. The Landlord stated that the Tenant had also asked her for a few more weeks to move as her new place was not ready yet.

A copy of the Two Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- 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 Landlord stated that she did not receive notification that the Tenant had applied to dispute the Two Month Notice.

The Landlord noted that the Tenant has not been paying rent in recent months and that she has served a 10 Day Notice to End Tenancy for Unpaid Rent as well.

## Analysis

Although the Landlord and Tenant are family members, I find that a tenancy was established through a verbal tenancy agreement when the tenancy started in September 2017. I accept the Landlord's testimony that there was an intent for the agreement to be a tenancy and that they agreed on a monthly rent amount of \$700.00. As stated in Section 2(1) of the *Act*, the *Act* applies to tenancy agreements, rental unit and other residential property. Section 12 of the *Act* also states the following:

- 12 The standard terms are terms of every tenancy agreement
- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
  - (b) whether or not the tenancy agreement is in writing.

I accept the testimony of the Landlord that the Two Month Notice was served to the Tenant on April 30, 2019. Although email is not a method of service under the *Act*, by also sending the notice by regular mail, I find that the Landlord served the notice in a manner as stated in Section 88(c) of the *Act*.

The Two Month Notice was issued pursuant to Section 49(3) of the *Act* as follows:

- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

As stated in Section 49(8)(a) of the *Act*, a tenant has 15 days to dispute a Two Month Notice issued under Section 49(3). If a tenant does not dispute the notice within the 15 days allowable, then Section 49(9) of the *Act* applies as follows:

- (9) 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.

I have no evidence before me that the Tenant applied to dispute the Two Month Notice and accept the Landlord's testimony that she did not receive any notification of a dispute. Therefore, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Two Month Notice. Although the notice states the end of the tenancy as June 30, 2019 I accept that the Landlord corrected this with the Tenant and that the tenancy was to end on July 31, 2019. I also note that as stated in Section 53 of the *Act*, incorrect effective dates are automatically changed to the correct date.

Upon review of the Two Month Notice, I find that the form and content comply with Section 52 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession pursuant to Section 55 of the *Act*. I grant the Landlord a two-day Order of Possession.

### Conclusion

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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.

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: August 16, 2019

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Residential Tenancy Branch