



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution made on March 23, 2020 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property, dated February 27, 2020 (the "Two Month Notice"); and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by W.T., an agent. The Tenant attended the hearing on her own behalf. W.T. and the Tenant provided affirmed testimony.

On behalf of the Landlord, W.T. testified that the Notice of Dispute Resolution Proceeding package was served on the Tenant in person. The Tenant acknowledged receipt and did not raise any issue with respect to service or receipt of these documents. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*. The Tenant did not submit documentary evidence in response to the Application.

The parties were provided with a full 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.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

The parties agreed the tenancy began in 2017 and that rent in the amount of \$1,350.00 is due each month. The parties agreed the Tenant paid a security deposit of \$650.00, which the Landlord holds.

On behalf of the Landlord, W.T. testified the Two Month Notice was served on the Tenant by registered mail on February 28, 2020. A Canada Post receipt was submitted in support. The Tenant testified the Two Month Notice was not received until March 12, 2020. The Two Month Notice was issued on the basis that the unit would be occupied by the Landlord or a close family member of the Landlord. The effective date provided on the Two Month Notice is May 10, 2020. A copy of the Two Month Notice was submitted in support. The Tenant acknowledged she did not dispute the Two Month Notice.

### Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 49(3) of the *Act* permits a landlord to take steps to end a tenancy if the landlord or a close family member intends in good faith to occupy the rental unit by issuing a notice to end tenancy. Pursuant to section 49(8) of the *Act*, a tenant has 15 days after receipt of a notice to end tenancy issued under this section to dispute it. Section 49(9) of the *Act* confirms that failure to dispute the notice to end tenancy results in the conclusive presumption the tenant has accepted the tenancy ends on the effective date of the notice and must vacate the rental unit.

In this case, I find the Two Month Notice was served on the Tenant by registered mail on February 28, 2020. Despite the Tenant's testimony that the Two Month Notice was not received until March 12, 2020, and pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. Therefore, I find the Two Month Notice is deemed to have been received by the Tenant on March 4, 2020. Accordingly, pursuant to section 49(8) of the *Act*, the Tenant had until March 19, 2020 to dispute it. The Tenant acknowledged she did not. As a result, and pursuant to section 49(9) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the Two Month Notice and must vacate the rental unit. Although the Two Month Notice indicated an effective date of May 10, 2020, I have found the Two Month Notice is deemed to have been received on March 4, 2020. As a result, pursuant to section 53(1) of the *Act*, I find the effective date is automatically corrected to May 31, 2020. Therefore, I find the Landlord is entitled to an order of possession, which will be effective on May 31, 2020, at 1:00 p.m.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee, which I order may be retained from the security deposit held.

### Conclusion

The Landlord is granted an order of possession, which will be effective on May 31, 2020, at 1:00 p.m. 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: May 12, 2020

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Residential Tenancy Branch