



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL

### Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on March 20, 2020 seeking an order of possession for the rental unit. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on May 15, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the telephone conference all hearing; the tenant did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document has been served in a verified manner.

The landlord gave testimony that they served notice of this hearing via email to the tenants on the day they filed the Application. That email attached notice of this hearing. This is the email generated by this branch when a party makes an application for dispute resolution and pays the required fees. The landlords and tenants discussed the end of tenancy prior to this hearing and the landlord states the tenants are not taking issue with ending the tenancy. For this reason, the landlord stated the tenants will not attend the hearing.

The landlord also stated they provided the evidence they have provided for this hearing to the tenants on April 16, 2020. This was also completed via email.

I accept the landlord’s undisputed evidence that the email of March 20 attached notice of this hearing today and that the tenants were aware of the date and time. The service of evidence on April 16, 2020 was also completed via email. This is sufficient service for the parties’ established mode of communication.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 49 and 55 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement, a copy of which they provided as evidence. The tenancy began on April 1, 2015, with the rent amount of \$3,000.00 payable on the 1<sup>st</sup> of each month. There was a security deposit of \$1,200.00 paid on April 1, 2015.

The landlord applied for an Order of Possession pursuant to the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") issued to the tenants on March 1, 2020.

The Two Month Notice contains the indication that the landlord served this document by attaching a copy to the door or other conspicuous place where the tenant resides. The landlord provided a 'Proof of Service' that gives detail of the same, with the signature of a witness who observed that service on March 2, 2020. The landlord also provided a picture of the posted notice, showing the document attached to the doorway of the rental unit.

The copy of the Two Month Notice submitted by the landlord contains the first two pages. The landlord in the hearing stated that they issued a full document to the tenants, including pages 3 and 4. The landlord stated they did not submit a copy including pages 3 and 4 – which contain instructions and information to the tenants upon their receiving it – because they thought it was not required for the purposes of this hearing.

The Two Month Notice states that the tenants must move out of the rental unit by May 30, 2020. By mutual agreement, the tenants requested one more month from the landlord. A copy of an email from the landlord to the tenants shows the landlord stating the notice is for a move out date three months later. This then set the move-out date for the tenants to be June 30, 2020. A message directly to the tenants reads: "We are required to give you 2 months notice but we wanted to give you 3 months notice Bc we have appreciated you guys so much as tenants. . ."

After this the tenants made arrangements that they would be vacating the unit as of June 1, 2020. The landlord stated that they are scheduled to meet with the tenants on that date to review the condition of the unit and finalize the move out.

The Two Month Notice states that the tenant had fifteen days from the date received to apply for dispute resolution, or the tenancy would end on the vacancy date indicated, May 30, 2020. There is no record of the tenant subsequently applying for dispute resolution.

The reason the landlord served this Two Month Notice is for their close family members to use the property. Messaging between the landlord and tenants appears in the evidence and this shows the landlord communicating the reasons for the end of tenancy to the tenants directly

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by giving notice to end tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(8) allows a tenant who receives a Two Month Notice 15 days to submit an Application for Dispute Resolution to cancel the notice. Section 49(9) stipulates that if a tenant fails to apply within 15 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice they must vacate the rental unit.

I have reviewed the Notice, and I find it complies with form and content requirements of section 52 of the *Act*. Section 90 allows for a document posted on the door of the unit to be deemed received on the 3<sup>rd</sup> day after it is posted. In accordance with this, I find the tenants were deemed served with the Notice on March 4, 2020, three days after its posting.

I find that the tenants did not dispute the Notice within 15 days, pursuant to section 49(8). I find that the tenants are conclusively presumed to have accepted that the tenancy will end in accordance with section 49(9). The agreed-upon date is June 30. The landlord provided testimony that a discussion with the tenant added one more month to the effective date. An email message dated March 1, 2020 states the same. The landlord's undisputed testimony is that the tenants are currently in the process of moving out and will have vacated the unit on June 1, 2020.

I have reviewed the Notice, and I find it complies with the form and content requirements of section 52 of the Act. In accordance with sections 89 and 90 of the *Act*, I find the tenants were deemed served with the Notice on March 4, 2020, three days after its posting.

The landlord's evidence shows the Two Month Notice was issued for a valid reason: 2 of the landlord's children are wishing to live at the rental unit. This qualifies as "close family member" by definition in section 49(1). I find this is a valid reason for the landlord to issue the Two Month Notice. This is undisputed by the tenants.

I find the landlord has the authority to issue the Notice under section 49 of the *Act*. I grant the landlord's request for an Order of Possession under section 55 of the *Act*.

### Conclusion

I grant an Order of Possession to the landlord effective **June 1, 2020**. 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 *Act*.

Dated: May 29, 2020

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Residential Tenancy Branch