



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, MNDCL-S, FFL

### Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order of Possession, further to having served a Two Month Notice to End Tenancy for Landlord's Use dated February 25, 2020 ("Two Month Notice"); and for a monetary claim of \$603.18 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement – holding the security deposit for this claim; and to recover the cost of their \$100.00 Application filing fee.

The Landlords, K.H.H. and C.J.L, and the agents for the Landlords, M.H, and M.H. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 45 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlords and the Agents, who indicated that were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlords and the Agents.

I explained the hearing process to the Landlords and Agents and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlords and the Agents were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agents testified that they served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on April 22, 2020. The Agents also said they served the Tenant with the Landlords' documentary evidence on May 8, 2020, by registered mail.

The Landlords provided Canada Post tracking numbers as evidence of service of both packages. I find that the Tenant was deemed served with the Notice of Hearing documents and evidentiary submissions in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlords and Agents in the absence of the Tenant.

### Preliminary and Procedural Matters

The Landlords provided their email address in the Application documents, and the Agents confirmed this at the outset of the hearing. The Agents also provided the Tenant's email address in the hearing, and confirmed their understanding that the Decision would be emailed to both Parties and any Orders would be sent to the appropriate Party.

The Application identifies the Landlords and the Agents as landlords; however, the tenancy agreement only identifies the Landlords, K.H.H. and C.J.L, as landlords; therefore, I have amended the Applicants' name in the Application, pursuant to section 64(3)(c) and Rule 4.2, to include the Landlords' names only.

Early in the hearing, I advised that Landlords and Agents that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this case, the Landlords indicated different matters of dispute on the Application, the most urgent of which was the Application for an order of possession, further to having served a Two Month Notice on the Tenant. I found that not all the claims on the Application are sufficiently related to be determined during this proceeding. I, therefore, advised the Parties that I would consider only the Landlords' request for an order of possession for the Two Month Notice, and the recovery of their \$100.00 Application filing fee at this proceeding. Therefore, the Landlords' monetary claim is dismissed, with leave to re-apply.

### Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

### Background and Evidence

The tenancy agreement states, and the Agents confirmed in the hearing that the fixed term tenancy began on March 15, 2017, and ran to February 28, 2018, and then operated on a month-to-month basis. The Agents confirmed that the Tenant pays the

Landlords a current, monthly rent of \$2,291.00, due on the first day of each month. The Agents confirmed that the Tenant paid the Landlords a security deposit of \$1,075.00, and no pet damage deposit.

The Landlords submitted a copy of the Two Month Notice, and the Agents confirmed the following details of it: the Two Month Notice was signed and dated February 25, 2020, it had the rental unit address, and was served by being posted on rental unit door on February 25, 2020. The Two Month Notice has an effective vacancy date of April 30, 2020; and it was issued on the ground that 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); specifically, the Two Month Notice states that the Landlords' child will occupy the rental unit when the Tenant moves out.

The Agents said that the Landlords need the Tenant to move out, because the Landlords and the Agents are a family of four adults who are living together in a one-bedroom suite in the residential property. The Agents said that they returned to the family home in order to isolate with their parents, given the Covid-19 state of emergency. However, the Agents said that they are concerned that if one of them becomes infected with the virus, there is no where for that person to isolate from the others.

Further, they said that their father, K.H.H., is immunocompromised, as he has an autoimmune condition and high blood pressure. The confined space and the risk of one of them getting Covid-19 could compromise the Landlord's health.

The Agents said that all four of them sleep in the one bedroom, and they submitted photographs of the small bedroom, which illustrate the four places in which they sleep in this bedroom.

The Agents said that they have been using their realtor as a communicator between the Parties, and that the realtor found at least three places to which the Tenant could have moved in April, which were within her budget and suited her pet situation. However, the Tenant rejected these proposals. However, the Agents said the Tenant sent the Landlords an email dated on May 19, 2020, which states the following:

I have taken many steps to relocate myself, my son, and our family dog to a new location that grants us access to my son's school, his father's address, as well as my job. I believe that with the proper timeline this can be accomplished. I would like to agree on a tentative move out date of July 1, 2020.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49(9) of the Act states that if a tenant who has received a Two Month Notice does not apply for dispute resolution within 15 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As there is no evidence before me that the Tenant disputed the Two Month Notice, I find that she is conclusively presumed under section 49(9) of the Act to have accepted the Two Month Notice, and I find that the tenancy, therefore, ended on April 30, 2020.

However, I find it important to stress that the reason for the Two Month Notice is that the Landlords and the Agents are living together in the other, smaller suite of the residential property, which has one bedroom for the four adult family members living there. Also, the Agents said that their father is immunocompromised with an autoimmune disorder, as well as high blood pressure. I find that the Landlords and Agents are concerned that the continued living conditions will further deteriorate the father's health, and prevent the family from having isolation options, should one of them contract Covid-19.

In addition, the Tenant's communication with the family through their realtor indicates that she is seeking an alternate residence, and proposed a tentative effective vacancy date of July 1, 2020. Accordingly, I find that the Order of Possession may be consistent with all Parties' intentions.

After considering the evidence before me overall in this matter, I award the Landlords with an Order of Possession, pursuant to section 55(2)(b) of the Act. As the effective date has passed, and the Agents testified that rent for April and May 2020 have not been paid, the Order of Possession will, therefore, be effective two days after service on the Tenant.

I also find that the Landlords are entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the Act, which I award them. I authorize the Landlords to retain \$100.00 from the Tenant's security deposit in satisfaction of this award.

### Conclusion

The Landlords are successful in their Application for an Order of Possession, further to

having served the Tenant with a Two Month Notice. Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 72 of the Act, I award the Landlord with recover of the \$100.00 cost of their Application filing fee. The Landlords are authorized to retain \$100.00 of the Tenant's security deposit in satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 29, 2020

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Residential Tenancy Branch