



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act, (the “*Act*”) to enforce a Two Month Notice to End Tenancy for Landlord’s Use of the Property, (the “*Notice*”) issued on March 25, 2020. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that they served the Application for Dispute Resolution to the Tenant by Canada Post registered mail, sent on May 15, 2020, a tracking number was provided as proof of service. I find that the Tenant has been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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

### Issue to be Decided

- Is the Landlord entitled to an order of possession, pursuant to section 55 of the *Act*?

### Background and Evidence

The Landlord testified that the tenancy began on April 1, 2019, that rent in the amount of \$1,330.00 is to be paid by the first day of each month and that the Tenant had paid a \$665.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to the Tenant on March 25, 2020, by personally serving it to the Tenant. The Notice indicated an end of tenancy date of May 31, 2020. The Landlord submitted a copy of the Notice into documentary evidence.

The Landlord testified that the Tenant had not served the Landlord with an application to show they had disputed the Notice.

The Landlord testified that the Tenant had not moved out in accordance with the Notice and that they are seeking an order of possession.

### Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities:

Section 49 of the *Act* requires that upon receipt of a Notice to End Tenancy for Landlord Use of the Property a tenant must, within 15 days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 49(9) of the *Act*.

#### **Landlord's notice: landlord's use of property**

**49 (8)** A tenant may dispute

- (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
- (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(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 find that the Tenant had personally received the Notice to end the tenancy on March 25, 2020. Pursuant to section 49(8) the *Act*, the Tenant had 15 days to dispute the Notice. I find that the Tenant did not dispute the Notice to End Tenancy and that the time for doing so has expired.

Therefore, I find that the Tenant is conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice. I find the Notice issued on March 25, 2020, is valid and enforceable.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 14 days after service of this Order upon the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I acknowledge that the Provincial Government declared a state of emergency on March 18, 2020. I note that the Emergency Order permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the *Act* (tenancy frustrated). The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the *Act* and can only be enforced through the Supreme Court of BC once the Emergency Order is lifted. The Landlord acknowledged understanding of these conditions during this hearing.

Conclusion

I grant an **Order of Possession** to the Landlord, effective not later than **14 days** after service of this Order upon the Tenant. The Tenant must be served with this Order. 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: June 9, 2020

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Residential Tenancy Branch