



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for landlord's use of property, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 25 minutes. The landlord's lawyer attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's lawyer confirmed that she had permission to represent the landlord named in this application, at this hearing.

The landlord's lawyer stated that the tenant was personally served with the landlord's application for dispute resolution hearing package on October 27, 2020, as well as by registered mail on October 28, 2020, to the rental unit where the tenant is still residing. The landlord provided a signed, witnessed proof of service for the personal service. The landlord provided a Canada Post receipt and the landlord's lawyer confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was personally served with the landlord's application on October 27, 2020, and deemed served on November 2, 2020, five days after its registered mailing.

The landlord's lawyer stated that the tenant was served with the landlord's first evidence package on November 25, 2020, by registered mail and again on December 17, 2020, by posting to the rental unit door. The landlord provided a Canada Post receipt and the landlord's lawyer confirmed the tracking number verbally during the hearing. The landlord provided a signed, witnessed proof of service for the posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the

landlord's first evidence package on November 30, 2020, five days after its registered mailing and on December 20, 2020, three days after its posting.

The landlord's lawyer stated that the tenant was served with the landlord's second evidence package on December 29, 2020, by leaving a copy with the tenant's father, an adult who resides with the tenant. The landlord provided a signed, witnessed proof of service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's second evidence package on December 29, 2020, by leaving a copy with the tenant's father, who is an adult apparently residing with the tenant.

The landlord's lawyer stated that the tenant was personally served with the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 4, 2020 ("2 Month Notice") on the same date. The landlord provided a signed, witnessed proof of service. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's 2 Month Notice on September 4, 2020.

#### Issues to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of property?

Is the landlord entitled to recover the filing fee for this application?

#### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the submissions of the landlord's lawyer, not all details of the respective arguments are reproduced here. The tenant did not provide any written evidence for this hearing. The principal aspects of the landlord's claims and my findings are set out below.

The landlord's lawyer stated the following facts. This month-to-month tenancy began on June 1, 2018. No written tenancy agreement was signed, as only a verbal agreement was reached. Monthly rent of \$900.00 is payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. The rental unit is a two-level house, where the landlord and her family occupy the upper floor, and the tenant occupies the ground-level main floor. The upper floor is 1,287 square feet, with three bedrooms and one bathroom. The landlord and her spouse occupy one bedroom, the landlord's son and partner occupy another bedroom, and one room is a storage room. The main floor rental unit is 1,287 square feet, with two bedrooms and one bathroom.

A copy of the 2 Month Notice was provided for this hearing. The landlord's lawyer confirmed that the 2 Month Notice indicates an effective move-out date of November 4, 2020. The landlord's lawyer confirmed that the following reason was indicated by the landlord on page 2 of the notice:

- *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).*
- *Please indicate which family member will occupy the unit.*
  - *The child of the landlord or landlord's spouse.*

The landlord's lawyer stated the following facts. The landlord's son intends to move into the rental unit with his partner. They require added space now that they both work from home. The landlord's son got a new job in September 2020 and has to do testing for his employer, which requires the use of 7 monitors, 4 computers, and other additional equipment. The landlord's son and partner were previously sleeping in their bedroom but had to move their work equipment in there, so they now sleep in an 85 square-foot storage room. The work equipment overheats their bedroom to 37 to 40 degrees Celsius and the area is now very cluttered. The landlord submitted photographs for same. The landlord and her spouse occupy one bedroom, and there is no more space on the upper level of the house. Therefore, the landlord's son and partner need to move into the rental unit main floor space. There have been no previous Residential Tenancy Branch ("RTB") hearings between these parties and no other notices to end tenancy were issued to the tenant.

### Analysis

Subsection 49(3) of the *Act* sets out that a landlord 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.

I accept the landlord's lawyer's submissions that the landlord's son intends to move into the rental unit in good faith. I accept that the landlord's son requires more space for him and his partner, since their current space, shared with the landlord, is too cluttered and overheated. I find that there is a good faith intention, since there have been no previous RTB hearings between these parties, nor have there been other previous notices to end tenancy issued to the tenant.

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant

received the notice. The tenant received the 2 Month Notice on September 4, 2020. The tenant did not dispute the notice by filing an application. Therefore, the tenant is presumed to have accepted that the tenancy ended on the corrected effective date of the notice, November 30, 2020.

Based on a balance of probabilities and for the above reasons, I find that the landlord's son intends in good faith to occupy the rental unit. I find that the landlord has met the onus of proof under section 49(3) of the *Act*. I find that the landlord's 2 Month Notice complies with section 52 of the *Act*.

Accordingly, I grant an Order of Possession to the landlord effective at 1:00 p.m. on February 1, 2021. During the hearing, the landlord's lawyer specifically asked for an order of possession effective on February 1, 2021. She said that rent was paid by the tenant until January 31, 2021. 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.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

I grant an **Order of Possession to the landlord effective at 1:00 p.m. on February 1, 2021**. The tenant must be served with a copy of 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.

I order the landlord to deduct \$100.00 total from the tenant's security deposit of \$450.00 in full satisfaction of the monetary award for the filing fee. The remainder of the tenant's security deposit of \$350.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: January 14, 2021

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Residential Tenancy Branch