



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, MNRL, 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;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 38 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Witness JM" testified at this hearing on behalf of the landlord.

The landlord stated that the tenant was personally served with the landlord's application for dispute resolution hearing package on November 2, 2020. Witness JM confirmed that he witnessed this service. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord's application on November 2, 2020.

The landlord stated that the tenant was served with the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 18, 2020 ("2 Month Notice") on the same date, by way of posting to her bedroom door. The landlord provided a signed, witnessed proof of service indicating that witness JM saw this posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 2 Month Notice on September 21, 2020, three days after its posting.

### Preliminary Issue - Amendment to Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include November and December 2020 rent, as the landlord's application was filed in October 2020.

The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 2 Month Notice required her to vacate earlier. Therefore, the tenant knew or should have known that by failing to pay the rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend this hearing.

### Issues to be Decided

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

Is the landlord entitled to a monetary order for unpaid rent?

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 testimony of the landlord, 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 testified regarding the following facts. This month-to-month tenancy began sometime in the year 2013. No written tenancy agreement was signed, as only a verbal agreement was reached. Monthly rent of \$650.00 is payable on the first day of each month. A security deposit of \$325.00 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 room in a duplex home, where the landlord currently occupies one room but does not share a kitchen or bathroom with the tenant.

The landlord seeks an order of possession based on the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The landlord confirmed that the 2 Month Notice indicates an effective move-out date of November 30, 2020.

The landlord confirmed that the following reason was indicated by him 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 landlord or the landlord's spouse.*

The landlord stated the following facts. The landlord sold his other house on December 30, 2020, and moved into the rental house on the same date. He currently occupies one room, which has a bed. The landlord's belongings are in boxes all over the house. There will be no furniture in the house soon. There are extensive renovations currently occurring at the rental property, and there is lots of drywall. No one should be living at the house right now, except the landlord. He intends to live at the house and then put it on the market to sell after the renovations are completed. He does not intend to re-rent the house to anyone else.

The landlord seeks a monetary order of \$2,080.00 for unpaid rent and to recover the \$100.00 filing fee paid for this application. The landlord claimed that the tenant failed to pay rent of \$300.00 for August 2020, \$650.00 for September 2020, \$530.00 for October 2020, \$350.00 for November 2020, and \$250.00 for December 2020.

During the hearing, the landlord said that the tenant was not required to pay rent for January 2021, since this was the one-month free rent compensation, as per the 2 Month Notice.

### 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 testimony that he intends to move into the rental unit and occupy it on his own, with no tenant present.

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 was deemed to have received the notice.

The tenant was deemed to have received the 2 Month Notice on September 21, 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 effective date of the notice, November 30, 2020.

Based on a balance of probabilities and for the above reasons, I find that the landlord 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 January 31, 2021. The landlord claimed that he made an agreement with the tenant for her to vacate on January 31, 2021. I find that the tenant is not required to pay rent for January 2021 to the landlord, as per section 51 of the *Act* and the 2 Month Notice.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, in this case. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$2,080.00 to the landlord from August to December 2020. Therefore, I find that the landlord is entitled to a monetary order of \$2,080.00 in unpaid rent from the tenant.

The landlord continues to hold the tenant's security deposit of \$325.00. Over the period of this tenancy, no interest is payable on the deposit. Although the landlord did not apply to retain this deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$325.00 in partial satisfaction of the monetary award.

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

### Conclusion

I order the landlord to retain the tenant's entire security deposit of \$325.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$1,855.00 against the tenant. 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I grant an **Order of Possession to the landlord effective at 1:00 p.m. on January 31, 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.

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 19, 2021

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Residential Tenancy Branch