



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL MNRL

### Introduction

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

- an Order of Possession for Landlord's Use of Property pursuant to sections 49 and 55; and
- A monetary order for rent pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords, their agent and I were the only ones who had called into this teleconference.

Both landlords attended the hearing with their property manager, NS. The landlords were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that the tenant was served with the Notice of Dispute Resolution Proceedings package by registered mail on December 4, 2020. The tracking number for the mailing is recorded on the cover page of this decision. Property manager NS testified that he witnessed the tenant open the package on January 02, 2021 and spoke to her about the hearing on 3 separate occasions. I find the tenant deemed served with the Notice of Dispute Resolution Proceedings package on December 9, 2020, five days after it was sent by registered mail in accordance with sections 89 and 90 of the *Act*.

The property manager NS testified that the amendment was personally served by him upon the tenant on January 26, 2021. I find the amendment duly served on that date.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for landlord's use?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on September 1, 2015 with rent set at \$1,500.00 per month. A security deposit of \$750.00 was collected by the landlords which they continue to hold. A condition inspection report was conducted at the commencement of the tenancy.

On October 28, 2020, the landlord RS personally served the tenant with the Two Month's Notice to End Tenancy for Landlord's Use ("notice"). The tenant signed the original notice, provided as evidence for this hearing. The notice states that the rental unit will be occupied by the landlord and gives an effective date of January 2, 2021. The landlords testified that they intend on occupying the rental unit after the tenant vacates it.

The property manager testified that the tenant and the landlords agreed to the tenant being compensated with the equivalent of one month's free rent as receiving a half month's rent deducted for each of the months of November and December, 2020. The landlords testified that they deducted a half month's rent from each of those months' rent, accordingly and the obligation to compensate the tenant has been fulfilled. The tenant paid rent for the month of January by e-transfer and the landlords testified that they provided a receipt for use and occupancy only. The tenant paid only \$1,300.00 of the \$1,500.00 rent for February, citing an inability to pay the full month's rent.

At the conclusion of the hearing, the landlords made an oral application to recover the \$100.00 filing fee which was not sought in the Application for Dispute Resolution. My decision regarding this application is included below.

Analysis

I find the tenant was duly served with the landlord's Two Month's Notice to End Tenancy for Landlord's Use on October 28, 2020 in accordance with sections 88 and 90 of the *Act*.

The tenant has not made application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property. In accordance with section 49(9) of the *Act*, the tenant's failure to take this action within fifteen days led to the end of this tenancy on January 2, 2021 and required her to vacate

the rental premises by that date. As that has not occurred, I find that the landlord is entitled to an order of possession effective 2 days after service upon the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

In their amendment, the landlords sought additional unpaid rent. I find that the tenant has paid an equivalent of full rent for November and December, offset by the landlord's obligation to compensate the tenant with the equivalent of one month's rent. January's rent was fully paid, and February's rent was short by \$200.00. As the landlord has been awarded with an order of possession in mid-February, I find the landlord is not entitled to any further compensation for rent.

Rule 4.2 of the Residential Tenancy Branch Rules of Procedure state that in circumstances that can be reasonably anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I find that the tenant could reasonably anticipate the landlord would seek to recover the filing fee. In accordance with rule 4.2, I allow the landlord's application to amend the Application for Dispute Resolution to include the filing fee and the landlord is awarded the \$100.00 filing fee as their application was successful. In accordance with the offsetting provision of section 72 of the *Act*, I order the landlord is to retain \$100.00 of the tenant's security deposit in full satisfaction of the monetary order.

#### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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: February 12, 2021

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Residential Tenancy Branch