



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPL, FFL, MNRL, MNDCL**

### **Introduction**

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was represented by their agent GC (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with the notice of application and evidence by leaving a copy by attaching a copy to the door of the rental unit on or about January 26, 2021. The landlord submitted into evidence a photograph of themselves taping a copy of the notice to the door.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

### Background and Evidence

The landlord provided undisputed evidence on the following facts. The rental unit is a basement suite in a detached home. The landlord assumed the tenancy when they purchased the rental building. The monthly rent is \$900.00 payable on the first of each month. A security deposit of \$450.00 was transferred to the landlord and is still held. The landlord and their family now occupy the main floor of the rental building.

The landlord made written request to the former owners of the property to issue a 2 Month Notice to End Tenancy for Landlord's Use on the tenants. A 2 Month Notice dated October 29, 2020 with an effective date of December 31, 2020 was served on the tenant personally by the previous owners of the rental property. There was a previous hearing under the file number on the first page of this decision where the tenant testified that they were served with the 2 Month Notice. The tenant did not dispute the 2 Month Notice.

The landlord submits that the tenant has failed to vacate the rental unit and continues to reside in the suite. The landlord testified that the tenant has failed to pay any rent since January 2021 and there is a rental arrear of \$3,600.00 as at the date of the hearing.

The landlord gave evidence that they intend in good faith to occupy the rental unit and that they purchased the rental property with the specific intention of having possession of the whole building.

### Analysis

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary award:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*

- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

Posting the application for dispute resolution on the rental unit door is not a method of service permitted under section 89(1) of the *Act*. I find that the landlord has not served the tenant in a manner required by the *Act*. I am not satisfied that the tenant was properly served with the portion of the application for dispute resolution dealing with a monetary claim. The portion of the landlord's application seeking a monetary award is dismissed with leave to reapply.

Section 89(2)(d) of the *Act* allows a landlord to serve an application under section 55 [order of possession for the landlord] by attaching a copy to a door or other conspicuous place at the address at which the tenant resides.

Therefore, I find that the tenant has been served with the portion of the application for dispute resolution dealing with the landlord's claim for an Order of Possession in accordance with section 89(2) of the *Act*. In accordance with section 90 of the *Act*, I find that the tenant is deemed served with the portion of the landlord's application for an Order of Possession on January 29, 2021, three days after posting.

In accordance with section 49(9) of the *Act* a tenant who is served with a Notice to End Tenancy for Landlord's use who does not make an application for dispute resolution within the timelines provided under subsection (8) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

I accept the undisputed evidence of the landlord that the tenant was served with the 2 Month Notice of October 29, 2020 on or about that date. I accept the evidence that the tenant has not filed an application to dispute the notice. I therefore find that the tenant is conclusively presumed to have accepted that the tenancy ends on December 31, 2020, the effective date of the notice in accordance with section 49(9) of the *Act*. Accordingly, I issue an Order of Possession in the landlord's favour. As the effective date of the notice has passed I issue an Order effective 2 days after service.

As the landlord's application was partially successful I issue an order allowing the landlord to recover \$50.00, a portion of their application, from the tenant. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to

retain \$50.00 of the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$50.00 from \$450.00 to \$400.00.

The balance of the application is dismissed with leave to reapply.

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: April 20, 2021

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Residential Tenancy Branch