



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      OPL FFL

### Introduction

This hearing dealt with a Review Hearing of the landlord's original Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for an order of possession based on an undisputed 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 1, 2020 (2 Month Notice).

On February 23, 2021, an arbitrator issued a decision granting the landlord an order of possession. The tenant did not attend the hearing and applied for a Review Consideration of the February 23, 2021 decision and order, citing that they were unable to attend the hearing due to service issues.

On March 3, 2021 a different arbitrator suspended the February 23, 2021 decision and orders pending the outcome of this Review Hearing held on this date, May 27, 2021.

The landlord BG (landlord), landlord agent KG (agent) and the tenant attended the Review Hearing scheduled for this date, May 27, 2021. During the hearing the parties were affirmed, the Review Hearing process was explained to the parties and an opportunity to ask questions was provided to both parties.

As the tenant confirmed that they were served with the landlords' application and documentary evidence and had the opportunity to review those documents, I find the tenant was sufficiently served. The tenant confirmed that they did not serve documentary evidence but did serve the Review Consideration Decision as required.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of

Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

### Issues to be Decided

1. Is the landlord entitled to an order of possession under the Act?
2. If yes, is the landlord entitled to the filling fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The month to month tenancy began on August 15, 2019 and monthly rent was \$1,300.00. The parties agreed that monthly rent was decreased later in 2019 when the laundry service was removed, and that rent was decreased to \$1,200.00 per month. The tenant paid a security deposit of \$650.00 at the start of the tenancy, which the landlord continues to hold. The tenant continues to occupy the rental unit.

There was no dispute that the tenant was served with the 2 Month Notice in September 2020 and did not file an application with the RTB to dispute the 2 Month Notice. The tenant confirmed that they did not pay October 2020 rent as compensation from the landlord for having been served the 2 Month Notice. The tenant refused to vacate the rental unit and continues to occupy the rental unit.

Although the tenant wanted to raise the issue of good faith at this hearing, the parties were advised that good faith is only an issue if the 2 Month Notice was disputed, which the tenant failed to do and instead the tenant accepted the compensation under the Act for being served the 2 Month Notice and did not file an application to dispute the 2 Month Notice.

While the parties discussed a potential mutual agreement during the hearing, the agent decided to object to a mutual agreement. The landlord is seeking an order of

possession for the tenant overholding the rental unit and for the filing fee to be deducted from the security deposit.

The tenant stated that they could not move at the end of May 2021 as they have a child who is age 6.

The effective vacancy date listed on the 2 Month Notice was October 31, 2021, which I will address further below. The parties confirmed during the hearing that the tenant paid money for May 2021, which I will also address below.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, section 49(9) of the Act applies and states:

49(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.**  
[emphasis added]

Given the above and the evidence before me, I find the tenant was conclusively presumed to have accepted that the tenancy ends on the corrected effective vacancy date. I also note that there are no hardship clauses in the Act. Therefore, pursuant to section 53 of the Act, the effective vacancy date automatically corrects and in this matter, as the 2 Month Notice was dated September 1, 2020, I find the corrected effective vacancy date to be November 30, 2020 under the Act. Therefore, as the tenant failed to dispute the 2 Month Notice, **I find the tenancy ended on November 30, 2020 at 1:00 p.m.** I also find that the tenant has been overholding the rental unit since that date.

I find the money paid for May 2021 to be for use and occupancy only and that the landlord is entitled to an order of possession pursuant to section 55 of the Act, which I grant for **May 31, 2021 at 1:00 p.m.**

Pursuant to section 82(3) of the Act, **I set aside** the original decision and order of possession dated February 23, 2021 and this decision and order of possession are issued in place of the February 23, 2021 decision.

As the landlord's application was successful, I authorize the landlord to retain **\$100.00** from the tenant's security deposit of \$650.00 in full satisfaction of the filing fee, pursuant to sections 72 and 62(3) of the Act.

**I caution** the tenant that they may be held liable for all costs related to the enforcement of the order of possession.

### Conclusion

The original decision and order of possession dated February 23, 2021 are set aside.

This decision and the order of possession are issued in place of the February 23, 2021 decision. The tenancy ended on November 30, 2021 at 1:00 p.m.

The landlord is granted an order of possession effective May 31, 2021 at 1:00 p.m. This order must be served on the tenant by the landlord and then may be filed in the Supreme Court of British Columbia and enforced as an order of that court. I caution the tenant that they can be held liable for all costs related to enforcement of the order of possession.

The decision will be emailed to both parties. The order of possession will be emailed to the landlord only for service on the tenant as required.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 27, 2021

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Residential Tenancy Branch