



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPL, FFL**

This hearing was convened as a result of the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* ("Act") for:

- An Order of Possession based on a Two Month Notice to End Tenancy dated May 13, 2021 ("2 Month Notice") pursuant to section 49; and
- Authorization to recover the filing fee pursuant to section 72.

The landlord and her advocate (hereinafter the "Landlord") and the Tenant appeared at the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited by Rule 6.11 of the *Residential Tenancy Rules of Procedure*.

The Landlord testified that the Notice of Dispute Proceeding Hearing and Landlord's evidence ("NOH Package") had been served on the Tenant by registered mail on May 13, 2021. The Tenant disputed receiving the NOH Package on the basis that the postal code stated on the application for dispute resolution was incorrect. The Landlord submitted a copy of the receipt, tracking number, tracking information and a photo of the envelope containing the NOH Package. The tenant conceded that the postal code stated on the envelope containing the NOH Package was the correct postal code for the rental unit. I find that the Tenant is deemed served with the NOH Package on May 18, 2021 in accordance with sections 88, 89 and 90 of the Act, being 5 days after mailing.

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

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's application and my findings are set out below.

The Landlord testified the tenancy started on March 1, 2020 as a 16-month fixed-term tenancy ending June 30, 2021 with rent of \$2000.00 payable on the 1<sup>st</sup> of each month.

The Landlord testified that the Tenant was served with the 2 Month Notice by registered mail on May 13, 2021 with an effective date for move-out on July 31, 2021. The 2 Month Notice stated that the rental unit would be used by the Landlord's daughter. I have reviewed the 2 Month Notice and find that the 2 Month Notice was on the prescribed form and it contained the information required by section 52 of the Act.

The Tenant disputed receiving the 2 Month Notice on the basis that the postal code for the rental address on the application for dispute resolution was incorrect. As noted above, the Landlord testified that, although the postal code stated in the Landlord's application was incorrect, the postal code stated on the 2 Month Notice was correct. The Landlord testified that the 2 Month Notice had been served on the Tenant using the correct address and postal code.

The Tenant then testified that the Landlord had attempted to serve him with the 2 Month Notice in-person in front of his children during the COVID-19 pandemic. The Landlord submitted a copy of the receipt, tracking number and tracking information corroborating service of the 2 Month Notice on the Tenant. The Canada Post tracking information states that initial and final notices for pickup were sent to the rental address on June 21 and 27, 2021. It also states that the item was returned by Canada Post to the sender on the basis that the item was refused by recipient.

I am satisfied that the 2 Month Notice was mailed to the correct address and was served on the Tenant in accordance with section 88 of the Act. I find that, in accordance with section 90 of the Act, the Tenant was deemed to have received the 2 Month Notice on May 18, 2021, being 5 days after the date of mailing.

The Tenant confirmed that he has not made an application to dispute the 2 Month Notice. The Tenant stated that he has 2 children and required more time to find suitable living accommodations and for them to move into those accommodations.

Pursuant to section 63 of the Act, the parties attempted settlement negotiations during the hearing. However, those negotiations failed as the parties were unable to arrive at a mutually agreeable negotiation. Consequently, I will adjudicate this matter.

### Analysis

Subsections 49(3), 49(5) and 49(6) of the Act provide:

- 49 (3) A landlord who is an individual 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;
- ...
- (5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.
- (6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), 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 in italics]

The Landlord served the Tenant with the 2 Month Notice pursuant to section 49(3) of the Act on the basis that the Landlord's daughter would be using the rental unit. As the 2 Month Notice was deemed to have been served on the Tenant on May 18, 2021, the Tenant had until June 2, 2021 to file an application to dispute the 2 Month Notice. The Tenant testified that he did not dispute the 2 Month Notice. As a result, section 49(6) of the Act provides that the Tenant is conclusively presumed to have accepted that the tenancy ended on July 31, 2021. As of the date of this hearing, the tenant has not vacated the rental unit. Therefore, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

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

Conclusion

The Landlord is provided with an Order of Possession effective **two (2) days after service of this Order** on the Tenant. Should the Tenant or anyone 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.

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to deduct \$100.00 from the security deposit to recover the filing fee.

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: October 4, 2021

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Residential Tenancy Branch