



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPL, MNRL-S, FFL**

### Introduction

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

- An order of possession pursuant to section 55;
- A monetary award pursuant to section 67; and
- Authorization to recover the filing fees from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The applicant MS (the "landlord") attended with legal counsel and confirmed they represented both themselves and the other co-applicant. The co-tenant SS (the "tenant") attended on behalf of both named tenants.

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

As both parties were present service was confirmed. The tenant testified that they received the landlords' application and evidence and had not served any materials of their own. Based on the testimony, I find the tenants duly served with the landlords' materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlords purchased the rental property from Sellers in June 2021. The tenants have been occupying the basement suite of the rental property prior to the landlords' purchase. The tenant testified that monthly rent for the tenancy was \$1,000.00 payable on the first of each month and that they initially paid a security deposit of \$500.00 to the Sellers at the start of their tenancy. The parties did not provide a copy of a written tenancy agreement.

The landlords gave written notice to the Sellers to issue a Notice to End Tenancy pursuant to section 49(5) of the *Act*. A copy of the written request issued on March 8, 2021 was submitted into evidence. The landlords submit that the Sellers issued a 2 Month Notice to End Tenancy for Landlord's Use dated March 14, 2021 with an effective date of June 1, 2021. A copy of the 2 Month Notice was submitted into evidence. The landlord submit that the 2 Month Notice was served on the tenants by the Sellers on March 14, 2021 in person. The landlords submitted into documentary evidence witness statements from the Sellers and correspondence stating that the tenants were duly served with the 2 Month Notice in accordance with the *Act*.

The tenant disputed that they were ever issued a 2 Month Notice.

The parties agree that since the landlords took possession of the rental unit the tenants have paid no rent and continues to occupy the rental unit.

The landlords submit that as a result of the tenants' continued occupation of the rental unit they incurred costs for alternate accommodations and storage of items that were meant to be placed in the rental unit. The landlord submitted receipts and bank statements showing their expenditures and claim an amount of \$5,989.00 for costs incurred as a result of the tenants overholding the rental unit.

The landlords also claim the unpaid rent for the period that the tenants have continued to occupy the rental unit without making any payments to the landlords for their occupancy in the amount of \$4,000.00 for the period of June 1, 2021 to October 1, 2021, the date of the hearing.

The tenant testified that they were not issued a valid 2 Month Notice or any Notice to End Tenancy and thus had no obligation to vacate the rental unit. The tenant claims they have begun the process of moving out of the rental unit but confirmed they have not provided notice to the landlords nor returned the keys to the rental unit.

### Analysis

The landlords gave evidence that the 2 Month Notice of March 14, 2021 was served on the tenants by the Seller in person on that date. Personal service is an acceptable manner by which a document may be served on another party pursuant to section 88(a) of the *Act*.

The landlord provided documentary evidence by way of correspondence and written statements attesting that service was completed in accordance with the *Act*. The tenants dispute that they were served with any Notice to End Tenancy but provided little cogent submissions and no documentary materials to support their position.

I find the position of the tenants to be more in the nature of denial and contradiction with no evidence in support. I am satisfied with the evidence of the landlords which include their testimony and documentary materials that on a balance of probabilities the tenants were served with the 2 Month Notice on March 14, 2021 as submitted.

Section 49(8) provides that a tenant may dispute a notice to end tenancy issued by a landlord when they have entered into an agreement to sell the rental unit and the purchaser asks the landlord to give notice as a close family member intends to occupy the rental unit, by making an application for dispute resolution within 15 days after the notice has been received.

I find that the tenants did not file any application to dispute the 2 Month Notice and therefore, pursuant to section 49(9) are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, June 1, 2021.

Accordingly, I issue an Order of Possession in the landlords' favour. As the effective date of the notice has passed I issue an Order effective 2 days after service.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 57(3) of the *Act* provides that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. The issue is further detailed in Residential Tenancy Policy Guideline 3 which states in part:

If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant's occupancy of the unit or site.

I accept the undisputed evidence of the parties that monthly rent for this tenancy was \$1,000.00 payable on the first of each month. I further accept that the tenants have not made any payments since June 1, 2021.

I therefore find that the landlords are entitled to a monetary award in the amount of \$4,000.00, the equivalent of the rent for the period of June 1, 2021 to the date of the hearing.

I accept the undisputed evidence of the landlords that they needed to find alternate accommodations and storage due to their inability to occupy the rental unit. I find that the amounts paid by the landlords is directly attributable to the tenants' breach in failing to provide vacant possession of the rental unit on the date the tenancy ended. I accept the undisputed evidence of the landlord that the total amount of their losses \$5,989.00. Accordingly, I issue a monetary award in the landlords' favour for that amount.

As the landlords were successful in their application, they are entitled to recover their filing fee from the tenants.

### Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenants 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.

I issue a monetary order in the landlords' favour in the amount of \$10,089.00. The tenants must be served with this Order as soon as possible. Should the tenants 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.

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 1, 2021

---

Residential Tenancy Branch