



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding South Island Property Management Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **FFL, OPL**

### Introduction

This hearing dealt with application from the landlord pursuant to the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- An Order of Possession for landlord's use of property pursuant to Sections 49 and 55;
- Authorization to recover the filing fee for this application from the tenants pursuant to Section 72.

The agents RP and JH attended for the landlord ("the landlord"). The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Amendment

The landlord filed an Amendment on November 12, 2021 requesting an Order of Possession pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") which was served upon the tenant on October 26, 2021.

The only remedy requested by the landlord at this hearing is an Order of Possession pursuant to the Two Month Notice and reimbursement of the filing fee. The landlord withdrew all other claims.

Attendance of Tenant

The tenants ("the tenant") did not attend this hearing, although I left the teleconference hearing connection open for 55 minutes to enable the tenant to call into this hearing. I confirmed the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system the landlord and I were the only ones who had called into this teleconference.

Service Upon Tenant

As the tenant did not attend the hearing, the landlord provided affirmed testimony and supporting documents regarding service of the Amendment, Notice of Hearing and Application for Dispute Resolution.

The landlord testified the documents were served on the tenant on November 12, 2021 by posting to the tenant's door of the unit in which they reside. The landlord submitted a witnessed and signed Proof of Service document in the RTB form.

I accept the credible evidence of the landlord. I find the tenant was served with the documents November 12, 2021 pursuant to Section 89 and 90 of the Act.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for landlord's use?
2. Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord submitted a copy of the tenancy agreement. As the tenant did not attend the hearing, the landlord provided undisputed testimony regarding the following facts.

The monthly tenancy began on August 1, 2007. Rent payable on the first of each month is \$2,098.00. At the beginning of the tenancy, the tenant provided a security deposit of \$800.00 which the landlord holds.

The landlord issued a Two Month Notice on October 26, 2021 which was posted to the tenant's door on that day described as follows:

INFORMATION	DETAILS
Type of Notice	Two Month Notice
Date of Notice	October 26, 2021
Effective Date of Notice	December 31, 2021
Date and Method of Service	Posting on October 26, 2021 Witnessed proof of service submitted
Effective Date of Service	October 29, 2021
Reasons for Issuance	Sale of unit
Application for Dispute Resolution filed by tenant - date	none

The Two Month Notice is in the standard RTB form and includes notice to the tenant of the right to dispute the Notice within 15 days.

The landlord submitted a copy of the Two Month Notice. The Notice states as follows:

*All of the conditions for the sale of the rental unit have been satisfied and the purchase has asked the landlord, in writing, to give this Notice because the purchase or a close family member intends in good faith to occupy the rental unit.*

The landlord testified the tenant did not file an application to dispute the Two Month Notice.

The landlord testified the tenant went to the landlord's office on November 4, 2021 and said they were not moving out. The landlord submitted a supporting letter from employee TM dated November 4, 2021 regarding the tenant's stated refusal to move out.

In support of this application, the landlord submitted the following evidence:

1. Timeline of events.
2. Written statement of agents attending the hearing that the property in which the unit is located is subject to an accepted Contract of Purchase and Sale dated October 18, 2021 subject only to purchaser occupation of the unit and vacant possession on December 31, 2021.
3. Copy of Contract of Purchase and Sale dated October 18, 2021.
4. Copy of document "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession" dated October 21, 2021 signed by the proposed purchaser of the property.
5. Copy of letter dated October 26, 2021 from landlord to tenant informing them of the sale and the vacancy requirement and confirming compensation of one month's rent.

The landlord testified that all submitted documents were served upon the tenant as part of the evidence package and Application for Dispute Resolution.

The landlord testified the tenant continues to occupy the unit.

As the tenant informed the landlord that they will not be moving out on December 31, 2021 pursuant to the Two Month Notice, the landlord requested an Order of Possession effective December 31, 2021 to assure vacant possession in order that the sale take place.

The landlord also requested reimbursement of the filing fee of \$100.00

### Analysis

The landlord provided undisputed evidence at this hearing as the tenant did not attend.

I find that the tenant was duly served with the Two Month Notice on October 26, 2021 requiring the tenant to vacate the unit on December 31, 2021. I am satisfied the form and content of the landlord's Two Month Notice complied with Section 52 of the *Act* and was served in accordance with Section 88 of the *Act*.

I accept the landlord's evidence that the tenant did not dispute the Two Month Notice within 15 days.

Accordingly, I find that the tenant is conclusively presumed under Section 49(9) of the *Act* to have accepted that the tenancy ended on the effective date of the Two Month Notice, December 31, 2021.

I find the tenant has informed the landlord they will not vacate the unit on December 31, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to Section 55 of the *Act* effective December 31, 2021.

I grant the landlord an award of \$100.00 for reimbursement of the filing fee which may be deducted from the security deposit held by the landlord.

### Conclusion

I grant an Order of Possession to the landlord effective December 31, 2021. This Order must be served 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.

I grant the landlord a monetary award for reimbursement of the filing fee which may be deducted from the security deposit.

The remainder of the landlord's claims are dismissed without leave to reapply.

Dated: December 11, 2021

---

Residential Tenancy Branch