



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL FFL

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on a undisputed 2 Month Notice to End Tenancy for Landlord's Use of Property dated May 14, 2021 (2 Month Notice) and to recover the cost of the filing fee.

The landlord, counsel for the landlord, ML (counsel), an articulated student, SP (articled student) and the tenant attended the teleconference hearing. The hearing process was explained to the parties and during the hearing the parties were given the opportunity to provide their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Regarding the service of evidence both parties confirmed being served with and having had the opportunity to review the evidence from the other party, with the exception of a few documents named by the tenant during the hearing, none of which I find relevant to the matter before me. As a result, I find the parties were sufficiently served in accordance with the Act.

### 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 would be emailed to them.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- If yes, is the landlord also entitled to the recovery of the cost of the filing fee?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 1, 2019 and reverted to a month-to-month tenancy after August 31, 2021. Monthly rent in the amount of \$1,800.00 is due on the first day of each month. There was no security deposit or pet damage deposit paid.

A copy of the 2 Month Notice was submitted in evidence. It is dated May 14, 2021 and the landlord writes in their application that it was served on May 27, 2021. The tenant confirmed that they had been served with the 2 Month Notice. The effective vacancy date listed on the 2 Month Notice was September 1, 2021, which was beyond the date of the fixed-term tenancy. The 2 Month Notice states on page 2 in part the following:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
Please indicate which close family member will occupy the unit.	
<input type="radio"/>	The landlord or the landlord's spouse
<input checked="" type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse
<input type="checkbox"/>	The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
<input type="checkbox"/>	All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit.

The landlord writes in their application that the landlord's son will be occupying the rental unit to care of the landlord's ailing wife. The tenant originally stated that they filed to dispute the 2 Month Notice and provided a file number of a hearing scheduled for

February 2022 (Future Hearing). The file number of the Future Hearing has been included on the style of cause for ease of reference. The parties were advised during the hearing that the Future Hearing did not relate to the 2 Month Notice at all and actually related to a 10 Day Notice, which is not relevant to this matter.

Although the landlord and counsel stated that the landlord considered the rental unit abandoned as of October 28, 2021 when the locks were changed by the landlord, the landlord is seeking an order of possession as the tenant stated that he did not abandon the rental unit.

### Analysis

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

**Order of possession** – Section 55(2)(b) of the Act applies and states:

#### **Order of possession for the landlord**

**55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:**

**(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;**

[emphasis added]

Based on the above and considering that the tenant failed to file an application to cancel the 2 Month Notice even though they were served with the 2 Month Notice, I find the tenancy ended on the effective vacancy date listed, which was **September 1, 2021**. In addition, **I grant** the landlord an order of possession **effective two (2) days after service on the tenant**, as the effective vacancy date of September 1, 2021 has passed.

I find the 2 Month Notice complies with section 52 of the Act as it is signed, dated and the correct form was used. I also find the landlord provided sufficient evidence to support that their son was occupying the rental unit to care for the landlord's frail wife.

As the landlord's application had merit, I grant the landlord the recovery of the filing fee in the amount of **\$100.00** pursuant to sections 67 and 72 of the Act.

### Conclusion

The landlord's application is successful.

The tenancy ended on September 1, 2021.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted a \$100.00 monetary order for the filing fee. Should the landlord require enforcement of the monetary order, the order must be first served on the tenant with a demand for payment letter and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The order of possession and the monetary order will be sent via email to the landlord for service on the tenant.

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: January 12, 2022

---

Residential Tenancy Branch