



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPL-4M, FFL**

### Introduction

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

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee from the tenant 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 landlord was represented by their agent (the "landlord").

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 landlord gave undisputed testimony that they served the tenant with their materials by registered mail sent on February 12, 2022. The tenant testified that while they were aware that the landlord served them with the application by registered mail, they chose not to accept or pick up the item from the postal service. As delineated in Policy Guideline 12:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Accordingly, I find the tenant deemed served with the materials on February 17, 2022, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

The tenant confirmed they have not served any materials of their own.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee from the tenant?

#### 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 parties agree this periodic tenancy began in April, 2021 with monthly rent payable on the first of each month. No security or pet damage deposit was paid. There is no written tenancy agreement. There was a previous hearing under the file number on the first page of this decision wherein a 10 Day Notice to End Tenancy for Unpaid Rent dated December 16, 2021 was cancelled.

The landlord issued a 4 Month Notice to End Tenancy for Conversion of the Rental Unit to a Non-Residential Use dated December 16, 2021. The landlord subsequently issued a 2 Month Notice to End Tenancy for Landlord's Use dated February 6, 2022. Both notices have an effective date of April 30, 2022. The tenant confirmed receipt of both notices and testified that they have not filed any application to dispute the notices.

The landlord testified that the non-residential use they intend to make of the rental unit is as a storage facility for their furniture, tools, hardware and items that are currently being stored elsewhere. The landlord explained that they are the owners of both the rental unit and an adjoining property in which they currently reside. Both properties are large plots, housing riding horses and the attendant items required for their care and upkeep. The landlord intends to use the rental unit as a convenient and geographically accessible storage facility for their little used furniture, tools, hardware and items.

The landlord testified that no renovation, demolition or work is required on the rental unit and therefore no permits or approvals are required.

### Analysis

Section 49(6)(f) provides that a landlord may end a periodic tenancy if they intend in good faith to convert the rental unit to a non-residential use.

Section 49(9) provides that a tenant who has received a notice to end tenancy and does not make an application to dispute the notice is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

In the present case the tenant gave undisputed evidence confirming they were served with the 4 Month Notice of December 16, 2021 and have not applied to dispute the notice within the timeline permitted under the *Act*, or at all. Accordingly, I find that the tenant is conclusively presumed to have accepted, pursuant to section 49(9), that the tenancy ends on its effective date, April 30, 2022.

I find the landlord's 4 Month Notice conforms with the form and content requirements of section 52 of the *Act* as it correctly identifies the rental unit address, the parties and the reason for the tenancy to end. The form is dated and electronically signed by the landlord's agent. I accept the landlord's undisputed evidence that they intend to use the rental unit for non-residential purposes, specifically the storage of their possessions. I accept that no permits or approvals are required for the intended usage.

I find the intended use of the rental unit to be believable under the circumstances and given the nature of the properties. I find that the use meets the definition of non-residential use as explained in detail in Policy Guideline 2B.

I therefore issue an Order of Possession in the landlord's favour. As the effective date of the notice has passed, I issue an Order enforceable 2 days after service on the tenant.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant 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 landlord's favour in the amount of \$100.00. The tenant must be served with this Order as soon as possible. Should the tenant 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: May 2, 2022

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Residential Tenancy Branch