



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL, OPL**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fee from the other party pursuant to section 72; and
- An order of possession pursuant to 2 Month Notice to End Tenancy for Landlord's Use, pursuant to sections 49 and 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 11:00 a.m. and ended at 11:11 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Both landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, make submissions and call witnesses. The landlords testified that they personally served the tenant with the Notice of Dispute Resolution Proceedings package on March 17, 2022 and provided the tenant's written signature acknowledging receipt of the package as evidence. I am satisfied the tenant was served with the Notice of Dispute Resolution Proceedings on March 17<sup>th</sup> in accordance with sections 89 and 90 of the Act.

This hearing was conducted in the absence of the tenant pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord's use?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. They personally served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use on December 31, 2021 when the tenant attended their residence to pay January's rent. An unsigned copy of the notice to end tenancy was provided as evidence, however the landlords testified that the tenant was served with a paper copy of it that was signed by the landlord, SB. The landlords testified that they want the rental unit back for their grown children to occupy.

After serving the tenant with the notice to end tenancy, the tenant took the time to read it fully. After reading the notice, the tenant advised the landlords that he wanted to "look into it" and purposely left it behind. The tenant refused to take his copy of the notice with him after reading it.

The landlords continue to hold the tenant's security deposit in the amount of \$287.50 that was collected at the commencement of the tenancy. The tenant has not vacated the rental unit pursuant the notice to end tenancy and he has paid rent for the months beyond the effective date of March 1, 2022. For the months of February, March and April, the landlord provided the tenant with rent receipts stating the rent was for "use and occupancy only", according to the landlord's undisputed testimony. The tenant did not pay rent for the months of May and June.

Analysis

I find the tenant was duly served with the landlord's 2 Month Notice to End Tenancy for Landlord's Use on December 3, 2021 pursuant to sections 88 and 90 of the Act.

Sections 49(8) and (9) of the Act state:

(8)A tenant may dispute

- a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
- b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.

Based on the landlord's testimony and the Notice before me, I find that the copy of the notice to end tenancy served upon the tenant was signed and dated and otherwise complies with the form and content provisions of section 52 of the Act. The tenant was served with an effective Notice.

Although the tenant had the opportunity to do so, he did not file an application to dispute the Notice within 15 days or attend this scheduled hearing. The tenant is therefore conclusively presumed to have accepted that the tenancy ends on March 1, 2022, the effective date of the Notice and must move out of the unit. As the effective date of the Notice has already passed, the landlord is entitled to an Order of Possession, effective 2 days after service upon the tenant, pursuant to section 55 of the Act.

As the landlord's application was successful, the landlord may recover the filing fee from the tenant. In accordance with the offsetting provisions of section 72 of the Act, the landlord may retain \$100.00 of the tenant's security deposit in full satisfaction of the filing fee recovery.

#### Conclusion

I grant an Order of Possession to the landlord effective 2 days after service on the tenant. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

Dated: June 24, 2022

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Residential Tenancy Branch