



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      For the landlord: OPL, FF  
For the tenants: CNL, LRE, OLC, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for:

- an order of possession of the rental unit pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued to the tenants;
- recovery of the cost of the filing fee

The tenants applied for:

- an order cancelling the Notice issued by the landlord;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- recovery of the cost of the filing fee.

The landlord and agent attended the hearing; the tenants did not attend.

The landlord submitted documentary evidence and testimony showing, that the tenants were each served with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail March 26, 2022.

Based upon the landlord's oral and written submissions, I accept each tenant was served the landlord's application package in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenants' absence.

Additionally, the agent testified that they had not been served with the tenants' application and expressed surprise when learning the tenants also had a hearing set for this time and day.

Thereafter the landlord, through his agent, was provided the opportunity to present their evidence and submissions orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### **Preliminary and Procedural Matter –**

Despite having their own hearing scheduled for 11:00 am on July 11, 2022, the tenants failed to attend the hearing.

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenants at the hearing or proof that they served the landlord with their application package, **I order their application dismissed, without leave to reapply.**

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit and recovery of the cost of the filing fee?

#### Background and Evidence

The evidence shows the tenancy began on August 1, 2019 and monthly rent is \$800, due on the first day of the month. The agent said that the tenants paid a security deposit of \$400 at the beginning of the tenancy. The landlord filed a copy of the written tenancy agreement.

The landlords submitted evidence that on February 1, 2022, they served the tenants with the Notice, by attaching it to the tenant's door. The effective date listed on the Notice was April 1, 2022. The Notice was filed into evidence, along with a signed and dated Proof of Service of the Notice.

The reason listed on the Notice for ending the tenancy was that the rental unit will be occupied by the child of the landlord or landlord's spouse.

The agent testified that he intends on moving into the rental unit, which is in the basement level of his father's (the landlord's) home as soon as the tenants vacate.

The agent testified that the tenants have stopped paying monthly rent, but still remain in the rental unit.

#### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I have reviewed the Notice and find it was completed in accordance with section 49 of the Act. I also find the Two Month Notice was completed in the approved form and the content meets the statutory requirements under section 52 the Act.

I find the landlord submitted sufficient evidence that the tenants were served the Notice on February 1, 2022, by attaching it to the tenants' door. A 2 Month Notice to end the tenancy is not effective earlier than 15 days after the date the tenant receives the Notice.

Under section 90 of the Act, a document served by attachment to the door or other conspicuous place is deemed received three days later. Here, the Notice was attached on February 1, 2022, and deemed received by the tenants on February 4, 2022. As the Act requires that the landlord provide the tenants at least two clear months' notice, I find the Notice effective date of April 1, 2022, is corrected to April 30, 2022.

I also find the landlord submitted sufficient evidence to support the reason listed on the Notice and that the landlord's close family member will occupy the rental unit upon the tenants' departure from the rental unit as intended.

I therefore order the tenancy ended on April 30, 2022, the corrected effective date of the Notice.

As a result, I find the landlord is entitled to an order of possession (Order) of the rental unit, pursuant to section 55(2) of the Act, effective two (2) days after service on the tenants.

If the tenants fail to voluntarily comply with the Order, the Order must be served on the tenant to be enforceable. The Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court if it becomes necessary.

The tenants are cautioned that costs of such enforcement, **such as bailiff costs**, are recoverable from the tenants.

I find the landlord is entitled to recover the costs of their filing fee, due to their successful application. I grant the landlord's request to deduct \$100 from the tenants' security deposit to satisfy the recovery of the filing fee.

### Conclusion

The tenants' application is dismissed without leave to reapply as they failed to attend the hearing to provide evidence at the hearing and to provide evidence they served the landlord with their application package.

The landlord's application for an order of possession of the rental unit is granted.

The landlord has been issued an order of possession of the rental unit, effective two days after service on the tenants.

The landlord is awarded recovery of their filing fee of \$100 and is given authority to deduct \$100 from the tenants' security deposit.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 11, 2022

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Residential Tenancy Branch