



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPQ, FFL

### Introduction

On July 22, 2022, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the “Notice”) pursuant to Section 49.1 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

P.M. and L.J. attended the hearing as agents for the Landlord; however, the Tenant did not attend at any point during the 17-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation. P.M. noted the correct name of the Landlord, and the Style of Cause on the first page of this Decision was amended to reflect this correction.

P.M. advised that the Notice of Hearing and evidence package was served to the Tenant by hand on August 9, 2022, and L.J. confirmed that she witnessed service of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was duly served the Landlord’s Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

P.M. advised that the tenancy started on July 1, 2011, that rent was established at a subsidized amount of \$586.00 per month, and that it was due on the first day of each month. A security deposit of \$318.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

He testified that the Notice was served to the Tenant by registered mail on January 25, 2022 (the registered mail tracking number is noted on the first page of this Decision). He submitted that he did not check the tracking history to determine what happened with this package.

However, the reason the Landlord served the Notice was because the “The tenant no longer qualifies for the subsidized rental unit.” The effective end date of the tenancy was noted as March 31, 2022, on the Notice.

P.M. advised that the Landlord does their best not to evict tenants; however, the Tenant has resided there for a significant period of time, and she knew that she was required to provide subsidy documents to the Landlord annually, as per the tenancy agreement. The Tenant neglected to do so in the past, and has not done so for 2022 either, despite a reminder given in November or December 2021.

E.J. confirmed that the Tenant was provided with a request to complete the annual rent review in November or December 2021, and to then submit relevant documents to the Landlord, by January 2022; however, the Tenant never complied. As such, the Notice was served.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

With respect to the Notice served to the Tenant on January 25, 2022, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence is that the Notice was served to the Tenant by registered mail on January 25, 2022. According to Section 49.1(5) of the *Act*, the Tenant had 15 days to dispute this Notice, and Section 49.1(6) of the *Act* states that *“If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant 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.”*

After being deemed to have received the Notice, the fifteenth day fell on Monday February 14, 2022, and the undisputed evidence is that the Tenant did not make an Application to dispute this Notice by that date. I find it important to note that the information with respect to the Tenant’s right to dispute the Notice is provided on the first page of the Notice.

Ultimately, as the Tenant did not dispute the Notice, and as there was no evidence provided corroborating that the Tenant had any extenuating circumstances that prevented her from disputing the Notice, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

As such, and based on the Landlord’s accepted evidence, I find that the Landlord is entitled to an Order of Possession. However, as P.M. requested to extend the date, I grant the Landlord an Order of Possession effective at **1:00 PM on January 15, 2023, after service of this Order** on the Tenant.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I permit the Landlord to withhold this amount from the Tenant's security deposit in satisfaction of this debt.

### Conclusion

I grant an Order of Possession to the Landlord effective at **1:00 PM on January 15, 2023, after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlord. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 13, 2022

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Residential Tenancy Branch