



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, MNRL-S, FFL

### Introduction

This hearing was scheduled to convene at 9:30 a.m. on January 24, 2023 concerning an amended application made by the landlord seeking an Order of Possession for the landlord's use of the property; a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and landlord's spouse attended the hearing, however did not take part in the hearing or give affirmed testimony; the landlord was also accompanied by the landlord's daughter who acted as agent for the landlord and gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Notice of Dispute Resolution Proceeding and some of the evidentiary material of the landlord, by registered mail on September 8, 2022. The landlord has provided a copy of a Canada Post cash register receipt and tracking document showing that the package was received by the tenant on September 29, 2022. The balance of the landlord's evidence was delivered to the tenant on January 6, 2023. I accept that, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence of the landlord has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in accordance with the *Residential Tenancy Act*, and in good faith?

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep the security deposit in partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on June 4, 2019, and the tenant left the rental unit on or about January 8, 2023 without notice to the landlord. Rent in the amount of \$780.00 was originally payable on the 1<sup>st</sup> day of each month, which was raised to \$790.00 per month effective February 1, 2022. On June 4, 2019 the landlord collected a security deposit from the tenant in the amount of \$390.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a ground floor suite, and the landlord lives in the upper level of the home. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that on June 13, 2022 the landlord personally served the tenant with a Two Month Notice to End Tenancy For Landlord's Use of Property, and a copy has been provided for this hearing. It is dated June 13, 2022 and contains an effective date of vacancy of August 31, 2022. The reason for issuing it states: 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), specifying the child of the landlord or landlord's spouse. The landlord's agent testified that the landlord's son will occupy the rental unit.

The landlord has not accessed the rental unit and has been waiting for this hearing; the tenant has not returned the keys. The tenant has not served the landlord with a Notice of Dispute Resolution Proceeding disputing the Notice, and the landlord seeks an Order of Possession.

The landlord has provided an amended Monetary Order Worksheet setting out the following claims, totaling \$3,560.00:

- \$790.00 for use of the unit (Sep 2022);
- \$790.00 for use of the unit (Oct 2022);
- \$790.00 for use of the unit (Nov 2022);
- \$790.00 for use of the unit (Dec 2022);
- \$790.00 for use of the unit (Jan 2023);
- - \$390.00 security deposit.

The landlord's agent testified that the tenant has not paid any rent for those months, or for the month of August, 2022, and the landlord considers August rent to be the compensation required for ending the tenancy.

### Analysis

The *Residential Tenancy Act* states that once served with a Two Month Notice to End Tenancy For Landlord's Use of Property, the tenant has 15 days to dispute it by filing and serving the landlord with a Notice of Dispute Resolution Proceeding. If the tenant doesn't do so, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate by the effective date of vacancy, which in this case is August 31, 2022. The landlord's agent testified that the tenant has not disputed it, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy. I accept the undisputed testimony of the landlord's agent that the landlord's son intends in good faith to occupy the rental unit, and I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant. The landlord must serve the Order of Possession to the tenant, which may be posted to the door of the rental unit, and is deemed to have been served 3 days later. The Order of Possession may be filed in the Supreme Court of British Columbia, and enforced as an order of that Court.

I also accept the undisputed testimony of the landlord's agent that the tenant has not paid any rent for the months of August, 2022 through January, 2023, and the landlord accepts that rent for August is not claimed, as compensation required by the *Residential Tenancy Act*. Therefore, I find that the landlord has established a claim of \$3,950.00.

Since the landlord has been successful with the application the landlord is also entitled to recover the \$100.00 filing fee from the tenant.

I order the landlord to keep the \$390.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlord for the difference of \$3,660.00 ( $\$790.00 \times 5 = \$3,950.00 + \$100.00 = \$4,050.00 - \$390.00 = \$3,660.00$ ). The tenant must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I hereby order the landlord to keep the \$390.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,660.00.

This order is final and binding and may be enforced.

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: January 24, 2023

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Residential Tenancy Branch