



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act, (the “Act”), for an order of possession based on an undisputed Two Month Notice to End Tenancy for Landlord’s Use of Property, (the “Notice”) issued on March 1, 2022.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The tenants confirmed they received the landlord documentary evidence when they received the landlord’s application; however, no subsequent evidence was received.

The tenants confirmed they did not serve the landlord with any documentary evidence as they had just uploaded their evidence to the digital filed January 30, 2023, the evening before the hearing. The tenant stated that their evidence is copies or prior notices to end tenancy that the landlord should have them and copies of receipts. As the evidence was not provided to the landlord, I find I must exclude the evidence. Further, the only notice to end tenancy for me to consider is the Notice subject to this dispute.

### Issues to be Decided

- Is the landlord entitled to an order of possession?
- Is the landlord entitled to a monetary for unpaid rent?
- Is the landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on June 1, 2015. Rent in the amount of \$1,500.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenants.

The landlord's agent testified that the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property, (the "Notice") issued on March 1, 2022, in person, with an effective date of May 1, 2022. Filed in evidence is a copy of the Notice, and the reason within the Notice is that the rental unit will be occupied by the child of the landlord or landlord's spouse.

The landlord's agent testified that the tenants did not dispute the Notice. The landlord's agent testified that they were married to the landlord's son and were expecting to move into the rental unit. The landlord's agent stated that they have been living in the landlord's residence; however, it has been difficult as they have been staying in the guest room and have been living out of a suitcase.

The tenants testified that they did not dispute the Notice. The tenants stated that the landlord accepted rent after the effective date and did not issue a receipt for use and occupancy and because of this the tenancy was automatically reinstated. The tenants stated that they have had discussion with the landlord regarding the tenancy ending and just recently the landlord stated they would give them two more months to vacate, which they are prepared to accept.

The tenants testified that they are in their 80's and have had multiple health issues, which include cancer and undergoing cancer treatment. The tenant stated they have been making an effort to move belongings as they have five storage lockers. The tenants stated they have been trying to obtain BC Housing

The landlord testified that they do not agree to extend the tenancy. The landlord stated that the tenants keep saying they will be moving; however, they are not and are hoarders. The landlord stated that the tenants have been given sufficient time to vacate.

The tenants responded that they are not hoarders but have accumulated items.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the evidence of the landlord that the Notice was completed in accordance with Part 4 of the Act - How to End a Tenancy, pursuant to section 49 of the Act. A copy of the Notice was filed in evidence for my review and consideration.

I find the Notice was completed in the approved form and the contents meets the statutory requirements under section 52 the Act.

In this case, the tenants were served in person on March 1, 2022. The Notice explains the tenant had 15 days to dispute the Notice. The Notice further explains if the Notice is not disputed within the 15 days that the tenants are presumed to accept the Notice and must move out of the rental unit by the date specified in the Notice.

I am satisfied based on the landlord's evidence that the landlord has met the statutory requirements under the Act to end a tenancy. The tenants did not apply to dispute the Notice and therefore conclusively presumed under section 49(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

While I accept the landlord did not issue receipts for "use and occupancy"; however, that alone does not lead me to believe that the landlord implied that they were waiving their rights under the Act to end the tenancy. The landlord is entitled to accept rent, as long as the tenants are occupying the premises. During this time the parties were negotiating to end the tenancy and the landlord's application was not withdrawn or cancelled. I cannot find that there was any agreement or implied agreement that the landlord was reinstating the tenancy as this issue has been ongoing.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act. I find the tenancy legally ended based on the Notice and the effective date has now passed.

While I acknowledge the landlord does not agree to extend the effective date beyond the two days provided. However, I find it appropriate to use my discretion given to me under the Residential Tenancy Branch Policy Guideline 54 as this would put the tenants in a position of immediate homelessness, vs the temporary inconvenience of the landlord's son and his wife.

In this case, the tenants have lived in the rental unit for 8 years and appeared to have accumulate a large amount of personal items. Both tenants are seniors, and the male tenant has health issues. Therefore, I find it reasonable and at my discretion to set

February 28, 2023, as the effective date for the order of possession. This is solely for the benefit of the tenants. The tenants are required to pay occupancy rent for February 2023. The parties were informed of this extension at the hearing.

I grant the landlord an order of possession, effective **1:00 PM on February 28, 2023**. A copy of this Order must be served upon the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

### Conclusion

The tenants failed to dispute the Notice. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy. The landlord is granted an order of possession.

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 31, 2023

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Residential Tenancy Branch