



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPL-4M

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for an order of possession under a Four Month Notice to End Tenancy for demolition of the property (the Notice), pursuant to sections 49 and 55.

Landlord KS (the landlord) and tenant BC (the tenant) attended the hearing. The landlord was assisted by counsel VG. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

### Issue to be Decided

Is the landlord entitled to an order of possession?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained

rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The tenant affirmed the ongoing tenancy started in November 2020. Both parties agreed that monthly rent today is \$3,000.00, due on the first day of the month.

Both parties agreed the landlord served in person the Notice on September 12, 2022.

The landlord submitted the Notice into evidence. It is dated September 09, 2022 and the effective date is February 01, 2023. The reason to end the tenancy is to demolish the rental unit.

The tenant did not dispute the Notice.

### Analysis

Based on the undisputed testimony, I find the tenant received the Notice on September 12, 2022, in accordance with section 88(a) of the Act.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and it is in the approved form.

Section 49(9) of the Act states:

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.

Section 49(9) of the Act is mandatory, and I do not have discretion as to its application. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must move out of the rental property.

As the tenant is occupying the rental unit and the effective date of the Notice is February 01, 2023, I find that the landlord is entitled to an order of possession, pursuant to section 55(2)(b) of the Act.

Residential Tenancy Branch Policy Guideline 54 provides the arbitrator may extend the effective date of an order of possession:

However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
  - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
  - e.g., If the tenant provides evidence of a disability or a chronic health condition.

Considering that the tenant has been occupying the rental unit since November 2020, I find it reasonable to extend the effective date of the order of possession to ten calendar days after service on the tenant.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

### Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective **ten calendar days after service of this order** on the tenant. 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: February 17, 2023

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Residential Tenancy Branch