



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPL, FFL**  
                                 **OPR-DR, MNR-DR, FFL**

### **Introduction**

This was a cross application hearing that dealt with the landlords' two applications pursuant to the *Residential Tenancy Act* (the *Act*). The landlords' first application (the "first application") for dispute resolution is for:

- an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlords' second application (the "second application") for dispute resolution is for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55; and
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The second application originated as a Direct Request Proceeding and was joined with the landlords' first application in an Interim Decision dated May 25, 2023.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlords and their advocates JO and LO attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords, their advocates and I were the only ones who had called into this teleconference.

The landlords confirmed their email address for service of this decision and order.

Preliminary Issue- Service

Advocate JO testified that the tenants were served with the first application via registered mail on April 27, 2023. A Canada Post registered mail receipt for same was entered into evidence. The mailing envelope/bubble mailer with the same tracking number was also entered into evidence, the envelope/bubble mailer shows the tenants' names and address. Based on the above undisputed testimony of advocate JO and the above documentary evidence, I find that the tenants were deemed served with the landlords' first application for dispute resolution on May 2, 2023, in accordance with sections 89 and 90 of the *Act*.

The May 25, 2023 Interim Decision stated:

The Applicants must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each Tenant within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Advocate JO testified that the tenants were each served with a copy of the above documents on May 4, 2023 via registered mail. The May 25, 2023 Interim Decision and Notice of Reconvened Hearing were emailed to the landlords on May 26, 2023. I find that it was not possible for the landlords to have served the tenants with the Interim Decision and Notice of Reconvened Hearing on May 4, 2023 as those documents were not in existence at that time. I find that the landlords have not proved that the Interim Decision and Notice of Reconvened Hearing were served on the tenants in accordance with the May 25, 2023 Interim Decision. The landlords' application for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55, and
- a Monetary Order for unpaid rent, pursuant to section 67

are dismissed with leave to reapply for failure to prove service. The landlords' claim for authorization to recover the filing fee for the second application from the tenants is dismissed without leave to reapply.

### Issues to be Decided

1. Are the landlords entitled to an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55 of the *Act*?
2. Are the landlords entitled to recover the filing fee for the first application from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlords and their advocates, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords provided the following undisputed testimony:

- This tenancy began on September 15, 2021
- Monthly rent in the amount of \$4,500.00 is payable on the fifteenth day of each month
- a security deposit of \$2,250.00 and a pet damage deposit of \$400.00 were paid by the tenants to the landlords.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Landlord JO testified that she personally served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on January 30, 2023.

Landlord LO testified that he witnessed landlord JO personally serve the tenants with the Notice on January 30, 2023.

The Notice was entered into evidence, is signed by landlord JO, is dated January 29, 2023, gives the address of the rental unit, states that the effective date of the Notice is April 15, 2023, is in the approved form, #RTB-32, and states the following grounds for ending the tenancy:

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).

The tenants did not file to dispute the Notice. Advocate JO testified that the tenants agreed to move out in accordance with the Notice but when the landlords attended at the subject rental property on April 15, 2023, the tenants refused to move and are still residing in the subject rental property.

Advocate LO testified that they gave the tenants free rent from March 15, 2023 to April 2023 as required when a Two Month Notice to End Tenancy is served. Advocate LO testified that the tenants have not paid any rent from March 15, 2023 to the present date. Advocate LO testified that a 10 Day Notice to End Tenancy for Unpaid Rent was served on the tenants on April 17, 2023.

### Analysis

Based on the undisputed testimony of the landlords, I find that the tenants were personally served with the Notice on January 30, 2023 in accordance with section 88 of the *Act*.

Section 49(8) and section 49(9) of the *Act* state that if a tenant who has received a Two Month Notice to End Tenancy for Landlord's Use of Property does not make an application for dispute resolution within 15 days after the date the tenant receives the notice, 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. In this case, the tenants did not dispute the Notice within 15 days of receiving it or at all.

I find that, pursuant to section 49 of the *Act*, the tenants' failure to file to dispute the Notice within 15 days of receiving it led to the end of this tenancy on the effective date of the notice, that being April 15, 2023. As this tenancy ended by way of the Notice on April 15, 2023, this tenancy was already ended before the 10 Day Notice to End Tenancy for Unpaid Rent was served on the tenants.

Section 55(2)(b) of the *Act* states:

(2)A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b)a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application

for dispute resolution and the time for making that application has expired;

Section 55(4) of the *Act* states:

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

Pursuant to sections 55(2)(b) and section 55(4)(a) of the *Act*, I find that the landlords are entitled to a two-day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

As the landlords were successful in their first application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the tenants.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenants' security deposit.

### Conclusion

The landlord's second application is dismissed with leave to reapply, except for the landlords' claim for the filing fee which is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords are permitted to retain \$100.00 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*.

Dated: July 27, 2023

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Residential Tenancy Branch