



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      OPL FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for landlord's use of property pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to present evidence and to make submissions.

### Issues

Is the landlord entitled to an order of possession for landlord's use of property (the "2 Month Notice")?

Is the landlord entitled to recover its filing fee?

### Background and Evidence

The tenancy began on November 1, 2012 with a current monthly rent of \$1500.00 payable on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$750.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on February 8, 2017 the 2 Month Notice was sent to the tenants by registered mail. A registered mail tracking number was provided in support of service.

The tenants acknowledged receipt of the 2 Month Notice.

In a previous decision dated, January 26, 2017, the tenants were successful in their application to cancel a previous 2 Month Notice dated November 25, 2016. The previous 2 Month Notice was cancelled as the landlord did not appear at the hearing to present evidence in support of the Notice.

The tenants are questioning how many times they have to keep disputing the same issue and also submit they tried to dispute the 2 Month Notice again but incorrectly filed a review application instead of an application to dispute the Notice. The tenants review application was filed on May 10, 2017. Upon receiving the review application decision, the tenants filed an application to dispute the 2 Month Notice, however their application was filed only six days before this hearing date and as such was not scheduled as a cross application with the landlord's application.

### Analysis

I am satisfied that the tenants were deemed served with the 2 Month Notice on February 13, 2017, five days after its mailing, pursuant to sections 88 & 90 of the Act. I find the 2 Month Notice complies with the form and content requirements of section 52 of the Act.

Pursuant to section 49 of the *Act*, the tenant may make a dispute application within fifteen days of receiving the 2 Month Notice. If, as in the present case, the tenant does not make an application for dispute within fifteen days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, April 30, 2017.

The 2 Month Notice issued by the landlord dated February 8, 2017 was a new Notice and the tenants were required to file an application to dispute this Notice by February 28, 2017 even though they were successful in having a previous Notice cancelled. The previous Notice was not cancelled on the merits of the Notice but rather due to the landlord not appearing in the hearing. If it was cancelled on the merits I could have given consideration to whether or not this matter had been previously decided. Further the tenants review application was not filed until May 10, 2017. Even if the tenants had correctly filed an application to dispute the 2 Month Notice at this time, it would still have been well outside the 15 day time limit.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. This amount can be retained from the security deposit.

Conclusion

I grant an Order of Possession to the landlord effective **two 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: June 12, 2017

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Residential Tenancy Branch