



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPL

### **Introduction**

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for:

- Order of Possession for Landlord's Use pursuant to section 55.

While the landlord, JP, attended the hearing by way of conference call, the tenants did not. I waited until 11:10 a.m. to enable the tenants to participate in this scheduled hearing for 11:00 a.m. The landlord was 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. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord gave sworn testimony that on August 19, 2022, the landlord's Application for Dispute Resolution hearing package and evidence were sent to the tenants by way of registered mail. The landlord provided a tracking numbers in their evidentiary materials. In accordance with sections 88, 89, and 90 of the Act, I find the tenants deemed served with the landlord's application and evidence on August 24, 2022, five days after mailing. The tenants did not submit any written evidence for this hearing.

The landlord provided undisputed testimony that the tenants were personally served with the landlord's 2 Month Notice dated May 1, 2022, on May 2, 2022. In accordance with section 88 of the Act, I find that the tenants duly served with the 2 Month Notice on May 2, 2022.

### **Issues to be Decided**

Is the landlord entitled to an Order of Possession?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on July 3, 2017, with monthly rent set at \$1,400.00, payable on the first of the month. The landlords hold a security deposit of \$700.00, and a pet damage deposit of \$1,400.00 for this tenancy.

The tenants were served with the 2 Month Notice dated May 1, 2022 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlords provided the following background for why they had decided to issue the 2 Month Notice. The landlord attached a letter to the 2 Month Notice which stated (identifying information removed for privacy):

*Please Note:*

*Tenant may continue to reside at his current residence of...at his current rental rate. This two month notice is in regards to reclaiming the use of the entire driveway and an additional portion of the back yard.*

*Tenant must remove any vehicles, RV motorhomes, and any and all equipment and belongings from the entire driveway and an additional portion of the back yard.*

*The landlord and additional family members are in need of the entire driveway, for personal use.*

***This two month notice is for the driveway and a portion of the backyard only.***

The landlord testified in the hearing that they required the use of the driveway and a portion of the backyard, which is currently occupied by the tenants.

The landlord testified that if the tenants are not able to remove their belongings and vehicles, the landlords request an Order of Possession.

### **Analysis**

Section 49 of the *Act* provides that upon receipt of a 2 Month Notice, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants have failed to file an application for dispute resolution within the 15 days of service granted under section 49(8)(a) of the *Act*. Accordingly, I find that the tenants conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the corrected, effective date of the 2 Month Notice, August 31, 2022.

I must now consider whether the 2 Month Notice is valid. Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. I note in this case, the landlords wish to reclaim a portion of the property, specifically the driveway and backyard, for personal use. As section 49(3) of the *Act* does not allow a landlord to end a tenancy for any of the reasons listed in section 47(1), or terminate or restrict a facility for a tenancy, I find the 2 Month Notice to be invalid, and therefore I dismiss the landlords' application for an Order of Possession pursuant to the 2 Month Notice without leave to reapply. The 2 Month Notice dated May 1, 2022 is of no force or effect, and the tenancy is to continue until ended in accordance with the *Act*.

For reference about terminating or restricting a facility, please refer to section 27 of the *Act*. Please also refer to section 47(1) of the *Act* for a ending a tenancy for cause.

**Section 27 Terminating or restricting services or facilities**, states as follows,

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
  - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
  - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

**Conclusion**

I dismiss the landlord's application without leave to reapply.

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 11, 2023

---

Residential Tenancy Branch