



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNL, MNDCT, OLC, RR, FFT, OPL, FFL

### Introduction

The hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, for a monetary Order for money owed or compensation for damage or loss, for a rent reduction, and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution.

The Landlord stated that on July 20, 2023 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in July of 2023 was sent to the Tenant, via registered mail. The Landlord submitted Canada Post documentation that corroborates this testimony. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing. As the documents were properly served to the Tenant, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenant.

The Landlord stated that the Tenant's Dispute Resolution Package was sent to him by registered mail, although it was not received by the Landlord until July 25, 2023.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Preliminary Matter #1

The teleconference hearing was scheduled for 11:00 a.m. on this date and by 11:14 a.m. the Tenant had not appeared.

I find that the Tenant failed to diligently pursue the Tenant's Application for Dispute Resolution. I therefore dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

#### Preliminary Matter #2

The Landlord's name is spelled differently on these two Applications for Dispute Resolution. As such, both spellings appear on the first page of this decision.

#### Issue(s) to be Decided

Should the Landlord be granted an Order of Possession?  
Is the Landlord entitled to recover the fee for filing an Application for Dispute Resolution?

#### Background and Evidence

The Landlord stated that this tenancy began in 2015 and that rent is due by the first day of each month.

The Landlord stated that on May 27, 2023 he personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use. This is consistent with information provided by the Tenant in the Tenant's Application for Dispute Resolution.

The Two Month Notice to End Tenancy for Landlord's Use declares that the unit will be occupied by child of the Landlord or the Landlord's spouse and that the unit must be vacated by August 01, 2023.

The individual assisting the Landlord at the hearing stated that:

- He is the Landlord's son;
- He is currently living with the Landlord;
- He graduated from university approximately 1.5 years ago; and
- He intends to live in the rental unit.

### Analysis

Section 49(3) of the *Act* stipulates that a landlord who is an individual 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. On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, which informed the Tenant that the tenancy was ending pursuant to section 49(3) of the *Act*.

On the basis of the Landlord's son's undisputed testimony that he will be living in the unit, I find that the Landlord has grounds to end the tenancy pursuant to section 49(3) of the *Act*.

As the Landlord has established grounds to end the tenancy pursuant to section 49(3) of the *Act* and the rental unit has not been vacated, I find that the Landlord is entitled to an Order of Possession.

I find that the Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on October 31, 2023. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim in the amount of \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution and I grant the Landlord a monetary Order for \$100.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: October 12, 2023

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Residential Tenancy Branch