



# 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 an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act, (the “Act”), for an order of possession and for an order to recover the cost of filing the application from the tenant.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on December 12, 2020 and was successfully delivered to the tenant on December 18, 2020. A Canada post tracking number was provided as evidence of service and the Canada post history show it was received by the tenant on the above date. I find the tenant has been duly served in accordance with the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recover the cost of the filing fee?

### Background and Evidence

Based on the testimony of the landlord, I find that the tenant was served with a Two Month Notice for Landlord’s Use of Property (the “Notice”), issued on September 1, 2020, by posting to the door. A copy of the Notice was filed in evidence for my review.

The Notice explains the tenant had 15 days to dispute the Notice. The Notice further explains if the Notice is not disputed within the 15 days that the tenant is presumed to accept the Notice and must move out of the rental unit by the date specified in the Notice, which was October 31, 2020.

The landlord stated that after they gave the Notice to the tenant and they realized the vacancy date was earlier than the Act allowed, as they issued it on the 1<sup>st</sup> of the month. The landlord stated that the date automatically corrected to November 30, 2020, under the Act.

The landlord stated the tenant accepted the Notice and also received their compensation, as the tenant withheld the rent for October 2020. The landlord stated that they were in communication with the tenant on November 30, 2020, by text message. The landlord stated they had asked the tenant what time they would be vacating the premise and the tenant responded that they would not be leaving as they had not found alternative housing.

The landlord stated that they filed their application for dispute resolution for an order of possession on the next day December 1, 2020. The landlord stated that the tenant has paid occupancy rent for February 2021 and agreed to have the order of possession effective on February 28, 2021.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the evidence of the landlord that the Notice was completed in accordance with Part 4 of the Act - How to End a Tenancy, pursuant to section 49 of the Act. A copy of the Notice was filed in evidence for my review and consideration.

I find the Notice was completed in the approved form and the contents meets the statutory requirements under section 52 the Act.

Further, I accept the evidence of the landlord that the tenant was served with the Notice in compliance with the service provisions under section 88 of the Act, by posting to the door of the rental unit.

I am satisfied based on the landlord's evidence that the landlord has met the statutory requirements under the Act to end a tenancy.

The tenant did not apply to dispute the Notice and therefore conclusively presumed under section 49(9) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice. The tenant also received compensation when they did not pay October 2020, rent.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective February 28, 2021. A copy of this order must be served on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find that the landlords have established a total monetary claim of \$100.00 to recover the filing fee from the tenant for this application. I order that the landlords retain the amount of \$100.00 from the tenant's security deposit in full satisfaction of the claim.

### Conclusion

The tenant failed to dispute the Notice. The tenant is presumed under the law to have accepted that the tenancy ended on the corrected effective date of the notice to end tenancy.

The landlord is granted an order of possession and may keep a portion of the security deposit in full satisfaction of the claim.

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 23, 2021

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Residential Tenancy Branch