



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord(s) filed under the Residential Tenancy Act, (the “Act”), for an order of possession, and an order to recover the cost of filing the application from the tenant.

The landlord’s agent 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 October 20, 2016, a Canada post tracking number was/were provided as evidence of service, the tenant(s) did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord’s agent 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's agent, I find that the tenant was served with a 1 Month Notice to End Tenancy for Cause (the "Notice"), issued on June 6, 2016 by posting to the door. The Notice explains the tenant had ten days to dispute the Notice. The Notice further explains if the Notice is not disputed within the ten 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.

The landlord's agent stated that the next day on June 7, 2016, the tenant came and asked if they were serious about the eviction, a copy of the Notice was in their hand.

The landlord's agent stated that shortly after that the tenant disappeared and they were told by others, that the tenant was in jail. The agents stated they did not make an application earlier as they were hopeful the tenant would appear and move-out their belongings.

The landlord's agent stated that the tenant has appeared and is currently moving their belongings; however, they seek an order of possession to ensure that they leave.

### Analysis

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

The tenant did not apply to dispute the Notice and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession effective not later than **two (2) days** after service of this Order upon you. 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 landlord has established a total monetary claim of \$50.00 to recover the filing fee from the tenant for this application. I order that the landlord retain the amount of \$50.00 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 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: November 18, 2016

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Residential Tenancy Branch