



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPC OPB FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on November 30, 2016. The Landlords filed seeking Orders of Possession for cause, breach of an agreement and to recover the filing fee.

The hearing was conducted via teleconference and was attended by the Landlords. No one was in attendance on behalf of the Tenant. The Landlords provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail on December 2, 2016. Canada Post tracking information was provided in the Landlords' oral submissions.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail.

As per the aforementioned, I find the Tenant was deemed served notice of this application and hearing on December 7, 2016, five days after they were mailed. Accordingly, I proceeded to hear the undisputed evidence the Landlords, in absence of the Tenant.

### Issue(s) to be Decided

Have the Landlords proven entitlement to an Order of Possession?

### Background and Evidence

I heard the Landlords state the Tenant has occupied the rental unit since September 1, 2015 based on a previous written tenancy agreement.

The Landlords submitted a copy of a subsequent written tenancy agreement listing three co-tenants. As per that agreement the parties entered into a fixed term tenancy agreement which commenced on September 1, 2016 and ended on November 30, 2016; at which time the Tenant(s) were required to vacate the rental unit. Rent of \$1,200.00 was payable on the first of each month. The Tenant(s) paid \$600.00 as a security deposit plus \$50.00 as a pet deposit on September 1, 2015. The Landlords testified that one Tenant, K.J. remains in the rental unit and refuses to vacate as per the tenancy agreement. The Landlords now seek an Order of Possession and recovery of their filing fee.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing and undisputed evidence, I find pursuant to section 62(2) of the *Act* as follows:

Section 55(2)(c) of the *Act* provides that a landlord may request an order of possession of a rental unit if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term.

I accept the undisputed evidence that the tenancy agreement required the Tenant(s) to vacate the rental unit on November 30, 2016, the end of the fixed term tenancy. As such, I grant the Landlords' application. The Landlords have been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*. The parties are reminded of the provisions of section 72(2)(b) of the *Act* which authorizes a landlord to deduct any amount the director orders a tenant to pay to a landlord, from the security deposit, which in these circumstances is \$100.00.

### Conclusion

The Landlords were successful with their application and were granted an Order of Possession and recovery of their filing fee, which they may withhold from the Tenant's security deposit.

This decision is final, legally binding, and 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 10, 2017

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Residential Tenancy Branch