



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order of Possession - Section 55;
2. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing in person and witnessed on June 1, 2017 in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started in 2011. Rent of \$1,400.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. On March 6, 2017 the Landlord served the Tenant with a two month notice to end tenancy for landlord's use (the "Notice") by posting the Notice on the rental unit door. The effective date of the Notice is set out as June 1, 2017. The reason indicated

on the Notice is that the Landlord or a close family member of the Landlord will be occupying the unit. The Landlord clarifies that their son and possibly their daughter will be moving into the unit. The Tenant did not dispute the Notice and has not moved out of the unit. The Tenant was given May 2017 as the no rent payable month as compensation for the Notice. The Tenant paid rent for June and July 2017 and the Landlord issued receipts for these payments for "use and occupancy only". The Landlord requests an order of possession for July 31, 2017.

### Analysis

Section 49 of the Act provides that a tenant who receives a two month notice to end tenancy for landlord's use has 15 days to dispute the notice. If a tenant who has received this notice does not make an application for dispute resolution within the time limit, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Section 55(2) of the Act provides that where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired, a landlord may request an order of possession. Given the undisputed evidence that the Tenant received the Notice, did not dispute the Notice and has not moved out of the unit I find that the Landlord is entitled to an order of possession and I grant that order as requested effective 1:00 p.m. on July 31, 2017.

As the Landlord's application had merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee and I order the Landlord to deduct this amount from the security deposit of \$700.00 plus zero interest in full satisfaction of the claim.

### Conclusion

**I grant** an Order of Possession to the Landlord effective 1:00 p.m. on July 31, 2017.

**I order** that the Landlord retain \$100.00 from the security **deposit** and interest of \$700.00 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: July 18, 2017

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Residential Tenancy Branch