



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPL CNL MNDCT

### **Introduction:**

Both parties made applications but only the landlord attended this hearing and gave sworn or affirmed testimony. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. on October 2, 2018. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference. The landlord applies to obtain an Order of Possession pursuant to section 49 of the *Residential Tenancy Act* (the Act) and to recover the filing fee.

The tenant applies to cancel the section 49 Notice to End Tenancy and to obtain compensation.

### **Issues:**

Has the landlord proved on a balance of probabilities that the tenancy had to be ended so that they or a purchaser could occupy the home?

Should the tenant be granted more time to file their application? If so, are they entitled to any relief and to compensation as claimed?

### **Background and Evidence:**

The landlord provided evidence that they served the Notice to End Tenancy dated May 26, 2018 to be effective July 31, 2018 by mail and by posting it on the door. I find it was legally served pursuant to section 88 of the Act for the purposes of this hearing but only the first page of the Notice was submitted as evidence. They said their Application was served by email as notified by the Residential Tenancy Branch. I find their Application was not served legally according to section 89 of the Act which requires personal service or registered mail service of the Application.

The landlord also testified they did not know if the purchaser intended to occupy the unit or if they did. They provided no letter from the purchaser to state the intent. They said they filed the Application because the lower tenants did not vacate and they do not want to be liable. They do not know if the tenants have vacated now but they have not paid rent for two months.

The tenants did not attend the hearing but they had requested more time to file their Application because they did not know their rights. Their application was filed on September 10, 2018.

**Analysis:**

1. I find insufficient evidence that the section 49 Notice was complete and was served with the second page which advises the tenants of their rights to dispute the Notice. I also find insufficient service of their Application.
2. I find insufficient evidence to prove that either the landlord or the new purchaser intended to occupy the home. Section 49 (5) of the Act provides that a tenancy may be ended if the landlord has sold the home and the purchaser requests in writing to end the tenancy because they or a close family member intends to occupy the home. The landlord did not provide any writing from the purchaser and seemed uncertain of the purchaser's intent.

For the above reasons I dismiss the landlord's application with leave to reapply.

On the tenant's application, I grant them more time to file their application as it appears they never received a second page of the Notice to End Tenancy which advises them of their legal right to dispute the Notice within 10 days.

**Conclusion:**

For the above reasons, I dismiss the Applications of the landlord and tenant and give both parties leave to reapply. I encourage them to try to resolve their dispute amicably first. No recovery of the filing fee is granted due to lack of success.

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 02, 2018

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Residential Tenancy Branch