



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, FFL

### Introduction

On December 3, 2018, the Landlord submitted an Application for Dispute Resolution requesting an order of possession based on the issuance of a 2 Month Notice to End Tenancy for Landlord Use of Property (“the Two Month Notice”). The matter was set for a conference call hearing.

The Landlord’s agent (“the Landlord”) attended the teleconference hearing; however, the Tenant did not. The Landlord submitted that the Tenant was served the Notice of Dispute Resolution proceeding, by registered mail sent on December 6, 2018. A Canada Post registered mail receipt and tracking number was provided as evidence of service. I find that the Tenant has been duly served with notification of the hearing in accordance with sections 89 and 90 of the Act.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Landlord testified that the Tenant moved out of the rental unit on January 4, 2019. The Landlord does not require an order of possession for the rental unit.

### Issue to be Decided

- Is the Landlord entitled to recover the filing fee for the application?

### Background and Evidence

The Landlord issued the Tenant a 2 Month Notice dated September 26, 2018. The reason for ending the tenancy in the Notice states:

*The rental unit will be occupied by the Landlord or the Landlord's close family member.*

The effective date shown on the 2 Month Notice is November 30, 2018.

The 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date set out on page 1 of the Notice. If the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

The Landlord submitted that the Tenant did not move out of the rental unit on the effective date of the 2 Month Notice.

The Landlord applied for an order of possession for the rental unit because the Tenant failed to move out of the unit by the effective date of the 2 Month Notice.

### Analysis

Pursuant to section 49 (6) of the Act, if a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

Under section 55 (2)(b) of the Act, if the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

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

The Tenant received the 2 Month Notice on September 26, 2018, and did not dispute the Notice within 15 days. Pursuant to section 49 (6) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. I find that the Tenant did not move out of the rental unit by the effective date of the 2 Month Notice.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant did not move out of the rental unit by the effective date of the 2 Month Notice, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I grant authority to the Landlord to withhold \$100.00 from the Tenant's security deposit for the application fee.

### Conclusion

The Tenant received the 2 Month Notice on September 26, 2018, and did not dispute the Notice or move out of the rental unit by the effective date of the Notice.

The Tenant moved out of the rental unit prior to this hearing and the Landlord does not require an order of possession.

I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I grant authority to the Landlord to withhold \$100.00 from the Tenant's security deposit for the application.

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: January 15, 2019

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Residential Tenancy Branch