



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, OPC

### Introduction

This hearing was convened by way of conference call. The Landlord had filed an Application for Dispute Resolution on February 27, 2019 (the "Application"). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated February 05, 2019 (the "Notice"). The Landlord also sought reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenant did not appear for the hearing which lasted 13 minutes. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that the hearing package and evidence were served on the Tenant in person February 28, 2019. The Landlord submitted a Proof of Service signed by the Tenant as evidence of service.

Based on the undisputed testimony of the Landlord, and Proof of Service, I find the Tenant was served with the hearing package and evidence in accordance with sections 59(3), 88(a) and 89(2)(a) of the *Residential Tenancy Act* (the "Act") and rule 3.1 of the Rules of Procedure.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence

and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlord had submitted a written tenancy agreement. It names a different landlord. The Landlord testified that the named landlord used to own the rental unit and that he purchased the rental unit two or three years after the tenancy began and thus became the landlord.

The agreement names the Tenant and relates to the rental unit. The tenancy started September 01, 2004 and is a month-to-month tenancy. The Landlord testified that rent is \$1,068.00. Rent is due on or before the first day of each month. The agreement is signed by the Tenant and on behalf of the named landlord.

The Landlord submitted a copy of the Notice. It is addressed to the Tenant and relates to the rental unit. It is signed and dated by the Landlord. It has an effective date of March 31, 2019. The grounds for the Notice are as follows:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and put the landlord's property at significant risk.
2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant and jeopardize a lawful right or interest of another occupant or the landlord.
3. Tenant has not done required repairs of damage to the unit/site.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord testified that he posted the Notice on the door of the rental unit on February 05, 2019.

The Landlord was not aware of the Tenant ever disputing the Notice.

The Landlord advised that rent has been paid for March and sought an Order of Possession effective at the end of March.

### Analysis

The Landlord was permitted to serve a notice to end tenancy on the Tenant pursuant to section 47 of the *Act* based on the grounds listed in the Notice.

Based on the undisputed testimony of the Landlord, I find the Tenant was served with the Notice in accordance with section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice on February 08, 2019.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

The Tenant had 10 days from receiving the Notice on February 08, 2019 to dispute it under section 47(4) of the *Act*. I accept that the Landlord is not aware of the Tenant disputing the Notice. I have no evidence before me that he did. I find the Tenant did not dispute the Notice.

Therefore, pursuant to section 47(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ends March 31, 2018, the effective date of the Notice. The Tenant is required to vacate the rental unit by March 31, 2018.

I do not find it necessary to determine whether the Landlord in fact had grounds to issue the Notice as the Tenant did not dispute it and therefore the conclusive presumption set out in section 47(5) of the *Act* applies.

I find the Landlord is entitled to an Order of Possession. I grant the Landlord an Order of Possession effective March 31, 2018 pursuant to section 55 of the *Act*.

As the Landlord was successful in this application, I grant the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100.00.

Conclusion

The Landlord is granted an Order of Possession effective March 31, 2018. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

As the Landlord was successful in this application, I grant the Landlord \$100.00 as reimbursement for the filing fee and grant the Landlord a Monetary Order in this amount. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 18, 2019

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Residential Tenancy Branch