



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, OPL

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for landlord use
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 2 month Notice to End Tenancy was served on the Tenant by posting on December 1, 2019. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was sufficiently served on the Tenant. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence:

The tenancy agreement provides that the tenancy started on April 1, 2015 and continues on a month to month basis. The tenancy agreement provided that the tenant(s) would pay rent of \$1400 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$700 at the start of the tenancy.

The tenant continues to reside in the rental unit.

Grounds for Termination:

The Notice to End Tenancy relies on the following provision of section 49 of the Residential Tenancy Act. :

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

The tenant testified the representative of the landlord is intending to permit his ex-wife to occupy the rental unit and as a result it is not a close family member. The landlord acknowledges he is going through divorce proceedings but testified the divorce has not been finalized. Neither party presented documents to prove these allegations.

Analysis:

I determined it was not necessary to make a determination on the above as I determined the landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- The tenant should properly have applied to have the Notice to End Tenancy cancelled within the time period set out in the Act. However, I determined the two month Notice to End Tenancy cannot be used to grant an Order of Possession where it is invalid on its face even where the Tenant failed to file an Application for Dispute Resolution.
- The Notice to End Tenancy and the Application for Dispute Resolution indicates the landlord is a corporation. However, the grounds set out in the Notice is consistent with a landlord who is an individual but is not appropriate for a corporate landlord.
- There is another provision under the Residential Tenancy Act which allows a corporation to end the tenancy on the basis of landlord use provided the corporation is a family corporation. The section provides as follows:

“A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares”

The landlord has not provided evidence to establish that the landlord is a family corporation.

In summary I determined the Notice to End Tenancy was invalid on its face and cannot support a corporate landlord's application for an Order of Possession under section 55 of the Act where it fails to set out proper grounds. As a result I dismissed the landlord's application for an Order of Possession. The tenancy shall continue with the rights and obligations of the parties remaining unchanged until ended in accordance with the provisions of the Residential Tenancy Act.

**This decision is final and binding on both parties.**

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: June 04, 2019

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Residential Tenancy Branch