



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 127 SOCIETY FOR HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPC, FFL**

### **Introduction**

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. Three agents of the landlord attended the hearing and was given a full opportunity to be heard, to present affirmed 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's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant was served the notice of dispute resolution form and supporting evidence package by posting it on the door of the rental unit on December 31, 2019. I find that the tenant was deemed served with this package on January 3, 2019, three days after the landlord's agent posted it, in accordance with sections 88, 89, and 90 of the Act.

### **Issues to be Decided**

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

The parties entered into a written, month-to-month tenancy agreement starting March 1, 2018. Monthly rent is currently \$996.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$467.50 and a “key deposit of \$75.00. The landlord still retains this deposit.

The landlord’s agent testified that the tenant was served with the landlord’s One Month Notice to End Tenancy for Landlord’s Use of the Property (the “**Notice**”) on October 17, 2019 via posting it on the door of the rental unit.

The Notice indicates an effective move-out date of November 30, 2019.

The ground to end the tenancy cited in the Notice was the “tenant is repeated late paying rent.”

The tenant did not dispute the Notice.

The landlord’s agents testified that the tenant advised the landlord that he would vacate the rental unit on January 5, 2020, but that they are uncertain if this occurred, as he has not returned the keys to the rental unit.

### **Analysis**

Sections 47(4) and (5) of the Act state:

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit by that date.

Based on the landlord’s agent’s testimony and the Notice, I find that the tenant was served with an effective notice. The tenant did not participate in the hearing or file an

application to dispute the notice within 10 days (or at all). Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (November 30, 2019), and must vacate the unit. As this has not occurred, I find that the landlord is entitled to an order of possession effective two days after service on the tenant, pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100 filing fee paid for the application.

In accordance with the offsetting provisions of section 72(2) of the Act, the landlord may retain \$100 of the security deposit in full satisfaction of this monetary award. The landlord is cautioned to follow the provisions of section 38 of the Act regarding the balance of the security deposit.

### Conclusion

Per section 55 of the Act, I grant an order of possession to the landlord effective two days after service on the tenant.

Per section 72 of the Act, I order the landlord to retain \$100 of the security deposit.

Dated: January 16, 2020

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Residential Tenancy Branch