



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession for landlord's use, pursuant to sections 49(3) and 55(2)(b) of the *Act*, and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

Both parties attended and were given an opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. Based on the testimonies I find that service of the notice of hearing and evidence was in accordance with sections 88 and 89 of the *Act*.

### Issues to be Decided

Is the landlord entitled to:

1. an order of possession for landlord's use?
2. recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

Both parties agreed the tenancy started prior to October 01, 2015, when the landlord purchased the rental unit. Monthly rent is \$650.00, due on the first day of the month. The landlord collected and still holds a security deposit of \$300.00. There are no arrears.

The landlord affirmed the Two Month Notice to End Tenancy for Landlord's Use (the Notice) was posted to the tenant's door on January 26, 2020.

The Notice was entered into evidence. The notice indicates the rental unit will be occupied by the landlord's close family member or the landlord. The effective date of the Notice is April 01, 2020.

Both parties agreed there was a Residential Tenancy Branch decision (the file number is on the cover page of this decision) cancelling this Notice. A copy of the decision was entered into evidence by the tenant.

The landlord affirmed she only learned of the tenant's application to cancel the Notice when she received the tenant's evidence for this application.

### Analysis

The January 26, 2020 Notice the landlord is relying upon for her claim for an order of possession has already been adjudicated and a decision was rendered (file number on the cover page of this decision). Thus, the landlord's application is *res judicata* – a matter already decided upon – and I decline to hear it.

### Conclusion

I decline to hear the landlord's application for an order of possession. The landlord's application to recover the filing fee from the tenant is dismissed.

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 15, 2020