



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

It was noted that the application does not include the unit number for the Tenant’s address. The Parties agree to amend the application to add the unit number. Given this agreement I amend the application to include the unit number in the Tenant’s address.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed or undisputed facts: The tenancy started on August 1, 2018. Rent of \$800.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit. The Tenant was given a one month notice to end tenancy for cause dated July 6, 2020 with an effective date of August 31, 2020 (the “Notice”). The stated reason for the Notice is that the Tenant

failed to comply with an order within 30 days of receipt of the order or the date in the order. The Notice sets out details that the Tenant failed to comply with an order to pay the rent on the first day of each month as contained in a decision dated May 21, 2020 (the "Decision").

The Tenant states that it only received the first page of the Notice. The Tenant states that it did not dispute the Notice as it was informed by the Residential Tenancy Branch (the "RTB") to ignore the Notice as there were no such notices being made available by the RTB. The Tenant states that it did not receive any copy of the Decision until provided with the Notice. The Landlord states that the Tenant was given a copy of the Decision when it served the Tenant with the Notice by attaching the Notice and Decision to the door on July 7, 2020. The Parties agree that rent has been paid for October 2020.

### Analysis

The Decision sets out the following order:

I ORDER the TENANT to ensure the full amount of rent is paid on or before the first day of every month from this date forward. For added certainty: This order applies regardless of the tenant's financial situation, whether the first day of the month falls on a holiday or other day the bank is closed, or any other circumstance. I FURTHER AUTHORIZE that if the tenant fails to comply with my order above, even if it is only one more late payment, the landlord may issue another 1 Month Notice to End Tenancy for Cause to the tenant citing the reason: "Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order." This stated reason corresponds to section 47(1)(l) in the Act.

Section 47(1)(l) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i)the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

Although the Decision authorizes the Landlord to issue a notice to end the tenancy “even after one late payment”, this authorization is referenced to correspond with the above section of the Act. I find therefore find that as the Decision is dated May 21, 2020, the earliest the earliest date for compliance with the order would be June 1, 2020 and that the later date for compliance would be 30 days after the Tenant receives the order. Based on the undisputed evidence that the Tenant did not receive the Decision until it was posted on the door with the Notice on July 7, 2020, whether the Tenant received all pages of the Notice or not and whether the Notice was disputed or not, I find that the Tenant received the order on July 10, 2020 and that the later date for compliance with the order therefore would be 30 days after July 10, 2020. As the Landlord issued the Notice prior to the end of the 30 days, I find that the Landlord was not able to end the tenancy when it did issue the Notice. As there was no basis for the Notice, the Notice is cancelled and of no effect. I dismiss the claim for an order of possession. As the Landlord’s application has not been successful, I decline to award recovery of the filing fee and in effect the application is dismissed.

### Conclusion

The Application 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 Act.

Dated: October 14, 2020

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Residential Tenancy Branch