



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPQ, FFL

### Introduction

The landlord issued a *Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit* (the “Notice”), the tenant did not dispute the notice, and the landlord seeks an order of possession, pursuant to sections 49.1(6) and 55(2)(b) of the *Residential Tenancy Act* (“Act”). In addition, the landlord seeks to recover the cost of the application filing fee pursuant to section 72 of the Act.

### Preliminary Issue: Attendance and Service of Notice of Dispute Resolution Proceeding

Two representatives for the landlord, a not-for-profit subsidized housing society, attended the hearing on December 3, 2021 at 11:00 AM. Neither the tenant nor anyone on the tenant’s behalf attended the hearing, which ended at 11:06 AM. (It is noted that the landlord remarked that they were contacted about 20 minutes before the hearing and given information that the tenant was admitted into hospital last night.)

The landlord confirmed that they served the Notice of Dispute Resolution Proceeding package on the tenant by way of Canada Post registered mail. Canada post tracking information was submitted into evidence and confirmed that the tenant had received the Notice of Dispute Resolution Proceeding. I am satisfied based on the undisputed oral and documentary evidence of the landlord that the tenant was served in accordance with the Act and the Rules of Procedure.

### Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to recover the cost of the filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The landlord gave evidence and confirmed that they served the Notice on the tenant by way of Canada Post registered mail on August 18, 2021. A copy of the Notice was submitted into evidence, as was documentation establishing that the Notice had been delivered to the tenant, and thus was deemed served. The effective date of the end of tenancy is indicated to be October 31, 2021.

The Notice was completed in full, and it indicated on page two that the tenant no longer qualified for the subsidized rental unit. Accompanying the Notice was a letter from the landlord to the tenant, dated August 18, 2021, explaining that the tenancy agreement requires the tenant to complete an annual rent review. The letter further indicates that despite repeated requests from the landlord, the tenant failed to provide the required documentation in order to perform the rent review.

To the best of the landlord's knowledge the tenant did not make an application for dispute resolution disputing the Notice; there is no information on the Residential Tenancy Branch file indicating that any application for dispute resolution was ever filed by the tenant.

### Analysis

The landlord issued the Notice under section [49.1\(2\)](#) of the Act. Having reviewed the Notice I find that it complies with section 52 of the Act as to form and content.

The Notice was deemed to be received by the tenant on August 23, 2021 (as per deeming provisions under section 90 of the Act), and the tenant did not dispute the Notice by making an application for dispute resolution within 15 days of receiving the Notice (as per section 49.1(5) of the Act).

As such, pursuant to section 49.1(6) of the Act the tenant is conclusively presumed to have accepted that the tenancy ended on October 31, 2021 and was required to vacate the rental unit by that date. To date, they have not.

Pursuant to [section 55\(2\)\(b\)](#) and section 55(4)(a) of the Act, the landlord is granted an order of possession. A copy of this order is issued in conjunction with this decision, to the landlord. The landlord must serve a copy of the order of possession on the tenant.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, the landlord is awarded \$100.00 to cover the cost of the filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As the tenancy ended on October 31, 2021, I authorize the landlord to retain \$100.00 of the tenant’s security deposit in satisfaction of the award.

### Conclusion

**The application is granted.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: December 3, 2021

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Residential Tenancy Branch