



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPB, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by the landlords and the tenant.

At the outset of the hearing the tenant asked if I had received her evidence that she submitted to the Residential Tenancy Branch on March 23, 2011. I noted that I had received the evidence but could not consider it as it was submitted outside the timelines allowed under the Residential Tenancy Rules of Procedure, that require evidence be served at least 5 days prior to a hearing.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession resulting from a breach of an agreement; to a monetary order to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided the following documents as evidence:

- A copy of a settlement agreement resulting from a dispute resolution hearing on January 20, 2011 that states the parties agreed to the following terms:
  1. The tenant will provide the landlords with vacant possession of the rental unit by 1:00 p.m., March 31, 2011.
  2. The tenant will pay rent in the amount of \$400.00 for the month of February, 2011.
  3. The tenant will pay no rent for the month of March, 2011.
  4. The landlords will provide the tenant with access to her items stored in the garage upon providing the landlords with 24 hours Notice.
  5. At the end of the tenancy, the security deposit will be administered in accordance with the provisions of the *Act*;

- A copy of email correspondence from the landlord to the tenant on February 1, 2011 at 9:26 p.m. reminding the tenant of her requirement to pay rent by the end of the day as per the settlement agreement;
- A copy of additional email correspondence between the parties dated February 2, 2011. In the email from the tenant to the landlord the tenant states “the rent cheque will be under the door”;
- A copy of a bank “returned item advice” showing the tenant’s cheque for February 2011 rent was returned to the landlord on February 7, 2011 as insufficient funds; and
- A summary of events leading to the landlord’s Application.

The landlords testified the tenant has paid rent for February and there is no dispute over that issue at this time. They further state they are concerned that the tenant has not yet made any effort to prepare to move and that she will not follow through by vacating in accordance with the agreement.

Both parties agree, the Dispute Resolution Officer conducting the hearing on January 20, 2011 turned down the landlord’s request for a order of possession because the parties had entered a mutual agreement and she felt there would be no need for the order.

The tenant testified that she had obtained a letter from her specialist yesterday that outlined that she unable to deal with the stress of moving at this time. She stated that she has eye surgery in early April, 2011. The tenant testified that despite this letter she plans to move out of the rental unit as of March 31, 2011.

Despite her assertion that she intends to vacate the rental unit, the tenant objects to the landlord being issued as she believes it will constitute a record that will be held against her in the future.

The tenant states she does not yet have new accommodation lined up; that she has not yet called to cancel her internet hook-up; that she has a friend who will help her arrange moving once she has a date; and that she has arranged for storage if she cannot find accommodation.

### Analysis

Section 55 of the *Act* allows a landlord to request, through dispute resolution, an order possession on the basis that the landlord and tenant have agreed in writing that the tenancy is ending. There is no requirement that either party has breached the agreement.

While an order of possession is granted to a landlord, it is only necessary for the landlord to enforce that order should the tenant fail to follow through on an agreement

made between the parties regarding the transfer of possession. The issuance of an order of possession is not an indictment of any wrong doing on anyone's behalf.

Having said this, I find that the tenant has already shown a disregard for the settlement agreement reached during the hearing of January 20, 2011 when she failed to pay the rent for February when it was due and then afterwards issued a cheque that was returned as insufficient funds.

In addition, by the tenant's own testimony, I find the landlord's have valid concerns over whether the tenant will vacate as per the settlement agreement.

### Conclusion

Based on the above, I find that the landlord is entitled to an Order of Possession effective **March 31, 2011 after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$50.00** comprised of the \$50.00 fee paid by the landlord for this application. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: March 24, 2011.

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Residential Tenancy Branch