



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPT, AAT, LAT

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order of possession; an order allowing the tenant access to the unit; and an order to change the locks in the rental unit.

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

During the hearing the tenant suggested that despite missing \$100,000.00 worth of items he was seeking only \$25,000.00 compensation as this was the maximum limit for Dispute Resolution. As the tenant had not applied for any type of monetary order, I refused the tenant's request for an amendment and advised that he remains at liberty to file a separate application for a monetary order.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order of possession; to an order to allow access to the rental unit; and to an order to authorize the tenant to change the locks, pursuant to Sections 30, 31, 54, and 70 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy began in October 2010 as a 1 year fixed term tenancy with monthly rent of \$550.00 due on the 1<sup>st</sup> of each month less \$150.00 for work performed for the landlord and a security deposit of \$275.00 was paid.

The landlord obtained an order of possession to end the tenancy through a conference call hearing for an early end to tenancy without notice on April 21, 2011. Both the landlord and the tenant attended that hearing.

The tenant seeks an order of possession for the following two reasons:

1. He wishes to reinstate the tenancy; and
2. He wishes to gain access to the rental unit and storage areas to establish a list of his missing possessions so that the police will lay charges against the landlord for theft.

The tenant testified the landlord obtained the order of possession fraudulently but provided no evidence or explanation of that statement. He further stated that after the landlord obtained the order he changed his mind and told the tenant he could stay.

The tenant first testified that he had been hospitalized since the end of April 2011 until July 2011 and then later confirmed that he had been incarcerated for 60 days in April 2011 and while there ended up being hospitalized for injuries obtained while incarcerated.

The tenant further testified that the landlord was told by a police officer that the tenant intended to return to reside at the rental unit. The tenant testified that he attempted to pay rent for the month of May 2011 on or about May 17, 2011 by having his father call the landlord but that the landlord did not return the tenant's father's call.

The landlord testified that no one knew that the tenant had been incarcerated for several days but that the tenant's door was wide open for that whole period as it was not uncommon for him to leave the door open. It wasn't until the landlord called the police once they found the tenant was missing that they found out the tenant was incarcerated. The landlord testified no police officer informed him of the tenant's intention to return to the rental unit.

The landlord testified that he had not heard from the tenant or the tenant's father regarding rental payment for May 2011 and that no messages were left for him to return. The landlord goes on to say that he had never told the tenant that he planned not to enforce the order of possession. Once it was determined that the tenant was incarcerated, the landlord felt it was not necessary to obtain a writ of possession through the Supreme Court as the tenant had vacated the rental unit.

The tenant asserts that the landlord was aware of his intention to return to live in the rental unit and that by not obtaining a writ of possession the landlord has no legal authority to have possession of the rental unit.

The landlord testified that after several attempts to have the tenant remove his belongings the tenant did not and when they found out he was staying with the local John Howard Society that had all of his possessions delivered to him there. The tenant denied receiving his possessions.

### Analysis

As the tenant has applied for an order of possession based on the above tenancy, I must consider whether or not a tenancy exists for which the tenant may obtain possession of a rental unit. The burden of proof is on the applicant tenant to establish that he has the right to obtain that possession, access and ability to change locks.

I accept that the tenancy ended on April 21, 2011 with the decision of the Dispute Resolution Officer granting the landlord an order of possession. While the tenant asserts that the landlord told him that he had changed his mind and that he wasn't going to enforce the order, the landlord denies this and the tenant has provided no evidence to support this part of his claim.

The tenant also asserts that a police officer informed the landlord that the tenant intended to return to the rental unit and the landlord denies this statement. The tenant has provided no evidence or witness testimony (i.e. police officer) to support this claim. The tenant also asserts that his father tried to pay the rent in May 2011 and that the landlord would not accept it. The tenant provided no supporting documentation or witness statements.

In light of the landlord's testimony and the tenant's lack of supporting evidence for his position, I accept that the tenancy ended in accordance with the decision dated April 21, 2011. I also accept that the landlord felt there was no need to obtain a writ of possession as the tenant had vacated the rental unit. This does not render the landlord's order of possession invalid.

I accept the landlord's testimony that he did not tell the tenant he had changed his mind regarding the order of possession. As such, the tenant would have no expectation that the landlord would "hold" his rental unit.

I find the tenant has provided insufficient evidence to establish that the tenancy should be reinstated and therefore I find the tenant is not entitled to possession of the rental unit. As I have accepted the tenancy ended on April 21, 2011 and I have found that the tenant is not entitled to possession of the rental, I further find the tenant is not entitled to access to the rental unit or to change the locks on the rental unit.

### Conclusion

Based on the above, I dismiss the tenant's Application in its entirety, without leave to reapply.

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: August 29, 2011.

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Residential Tenancy Branch