



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession.

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on April 6, 2013, Canada post tracking numbers were provided as evidence of service, and the tenants did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with Act.

I also note, the tenant (KW) submitted evidence to the branch on April 9, 2013.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

### Background and Evidence

The parties entered into a fixed term tenancy which began on August 1, 2008 and was to expire on July 31, 2009. The tenancy continued on a month-to-month basis

thereafter. Rent in the amount of \$2,980.00 was payable on the first of each month. A security deposit of \$1,490.00 was paid by the tenants.

The landlord testified that on September 3, 2012, they entered into a mutual agreement to end the tenancy on March 31, 2013. The landlord stated the tenant further acknowledged that they were to move on March 31, 2013, by an email dated January 19, 2013, in that email the tenants were attempting to extend the end date, which was denied. Filed in evidence is a copy of the agreement. Filed in evidence is a copy of the email thread.

The landlord testified the tenants have not vacated the rental and he seeks an order of possession.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the parties entered into a fixed term agreement which reverted to a month-to-month contract thereafter. The parties on September 3, 2012, entered into a mutual agreement to end the tenancy with an effective date of March 31, 2013.

The agreement of September 3, 2012, reads in part:

“3. As this is a mutual agreement between the tenant and landlord to end the tenancy on 31/March/2013, landlord is not bound to pay a one month rent to the tenant or give one month rent at the end of tenancy”.

[Reproduced as written.]

In the written submissions of the tenant's, they claim that the agreement made on September 3, 2012, is a new fixed term tenancy agreement and that agreement reverts to a month-to-month thereafter, and it does not say the tenant must move-out.

In this case, the parties did not cancel the original tenancy agreement that was signed on July 16, 2008, and that agreement reverted to a month-to-month. The parties entered into written agreement made on September 3, 2012, by mutual agreement to end the tenancy on a specific date, which was March 31, 2013.

Under Section 55(d) of the Act, a landlord may request an order of possession of a rental unit if the landlord and tenant have agreed in writing that the tenancy is ended.

I find the tenants are in breach of the mutual agreement made on September 3, 2012, which ended the tenancy on March 31, 2013.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

### Conclusion

The landlord is granted an order of possession.

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: April 18, 2013

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Residential Tenancy Branch