



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing dealt with the Landlords' Application requesting an early end to the tenancy, an order of possession and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. The appearing Landlord gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served the Tenant with the Notice of Hearing and Application by posting it to the window of the door of the rental unit on March 27, 2013. Under the Act items served this way are deemed served three days later. The Tenant did not appear at the hearing; however, I find the Tenant was duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Are the Landlords entitled to an early end of the tenancy and an order of possession?

### Background and Evidence

The Landlords allege the Tenant has damaged property at the rental unit.

The Landlords also served the Tenant with both a 10 day Notice to End Tenancy for unpaid rent and a One Month Notice to End Tenancy on March 15, 2013, with the police in attendance as witnesses. The Tenant had failed to pay March 2013 rent and the Landlords were alleging the Tenant damaged property at the rental unit, adversely affected other occupants or the Landlords' right to quiet enjoyment, or had jeopardized a lawful right or interest of another occupant or the Landlords.

The appearing Landlord testified that the Tenant vacated the rental unit on or about March 31, 2013, when all the belongings of the Tenant had been removed from the rental unit.

There was no evidence before me that the Tenant had made an Application to dispute the two Notices to End Tenancy served upon him.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Landlords are entitled to an order of possession in this situation; however, as the Tenant has vacated the rental unit an order of possession is not issued.

As there is no evidence the Tenant filed an Application to dispute the Notices served upon him, the tenancy would have ended under either the 10 day Notice to End Tenancy or the one month Notice to End Tenancy in any event. The Act contains a conclusive presumption that by failing to apply to dispute the Notices, the Tenant accepted the end of the tenancy.

By vacating the rental unit the Tenant has returned exclusive possession to the Landlords and the tenancy ended effective on March 31, 2013. As the Landlords had to file this Application, I allow them to keep \$50.00 from the security deposit held to recover the cost of the filing fee.

### Conclusion

Although the Landlords are entitled to an order of possession in these circumstances, the Tenant has vacated the rental unit and therefore, no order of possession is issued.

The Landlords may retain \$50.00 from the security deposit to recover the cost of filing fee for the Application.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 08, 2013

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Residential Tenancy Branch