



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O, FF

### Introduction

This hearing dealt with a landlord's request for an Order of Possession based upon a tenant's notice to end tenancy and mutual agreement to end tenancy. The tenant did not appear at the hearing. The landlord testified that he served the tenant with the hearing documents on September 26, 2013 in person at the rental unit. Based upon the landlord's undisputed testimony, I accepted that the tenant was served with the hearing documents and I continued to hear from the landlord without the tenant present.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The landlord submitted that he entered into a tenancy agreement with the tenant for the entire house. The tenant sub-let the basement level of the house with the landlord's consent. The landlord confirmed that he has not collected rent from the sub-tenant. Rather, rent for the entire house is given to him by the tenant.

The landlord submitted a copy of a notice to end tenancy dated September 23, 2013 that he received from the tenant. The effective date on the notice to end tenancy is October 31, 2013. The landlord also submitted that the landlord and tenant signed a Mutual Agreement to End Tenancy indicating the tenancy would end October 31, 2013.

The landlord is requesting an Order of Possession because the person occupying the basement level has indicated he does not intend to vacate the basement by October 31, 2013. The landlord has tried to impress upon the tenant that the tenant is responsible for ensuring the basement sub-tenant vacates when the tenancy between the landlord and tenant ends. In response, the tenant has indicated that the landlord will have to deal with the sub-tenant.

### Analysis

Section 55 of the Act provides that a landlord may request an Order of Possession where a tenant has given notice to end the tenancy or where the parties have signed a mutual agreement to end tenancy. Based upon the evidence presented to me, I am satisfied the tenant gave the landlord written notice to end tenancy and the parties signed a mutual agreement to end the tenancy and that both such documents provide that the tenancy would end effective October 31, 2013.

Having heard the landlord entered into a tenancy agreement with the tenant only; the tenant secured a sub-tenant for the basement level; and, the landlord receives only one rent payment from the tenant only, I am satisfied that the rental unit rented to the tenant by the landlord the entire house. I am also satisfied the landlord did not enter into a tenancy agreement or an assignment of the original tenancy agreement with the sub-tenant. As such, the tenant remains solely obligated to the landlord for returning vacant possession of the entire house to the landlord by October 31, 2013. The tenant is also responsible for ensuring the entire house is returned in a reasonably clean condition and undamaged. As this is a sub-let situation, the sub-tenant does not acquire any rights of the original tenancy agreement and any dispute the sub-tenant may have is between the sub-tenant and the tenant, as the tenant is the landlord of the sub-tenant.

I award the landlord the filing fee paid for this Application as I find the need for this Application is due to the tenant's actions or failure to take reasonable action in light of the circumstances. The landlord is authorized to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

### Conclusion

The landlord has been provided an Order of Possession effective October 31, 2013 to ensure vacant possession of the rental unit is returned to the landlord. The landlord has been authorized to deduct \$50.00 from the tenant's security deposit to recover the filing fee paid on this Application.

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: October 16, 2013

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Residential Tenancy Branch

