



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, FF

### Introduction

This was a hearing with respect to the landlord's application for an order for possession pursuant to a two month Notice to End Tenancy for landlord's use. The landlord's representative and the tenants called in and participated in the hearing.

### Issue(s) to be Decided

Is the landlord entitled to an order for possession and if so, when should it be effective?

### Background and Evidence

The rental unit is a basement suite in the landlord's house in Port Coquitlam. The landlord personally served the tenants with a two month Notice to End Tenancy for landlord's use on November 30, 2013. The Notice required the tenants to move out of the rental unit by January 30, 2014. The grounds for the Notice to End Tenancy were that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member. The tenants did not dispute the Notice to End Tenancy by filing an application for dispute resolution within 15 days of receiving the Notice as provided by sections 49(8) and 49(9) of the *Residential Tenancy Act*. The landlord filed his application seeking an order for possession on December 30, 2013, after the tenants informed him that they would not move out of the rental unit at the end of January, as required by the Notice to End Tenancy.

The tenants claimed at the hearing that the Notice to End Tenancy was retaliatory and they said that they opposed the Notice to End Tenancy, although they did not apply to dispute the Notice. The tenants have paid rent for February; they say that they should not be required to move because the landlord accepted their rent payment.

### Analysis

There have been other disputes between the landlord and the tenants during the course of this tenancy, but they are not germane to the application that is before me. The

landlord served the tenants with a two month Notice to End Tenancy dated November 30, 2013. The effective date of the Notice should have been January 31, 2014, rather than the stated date of January 30, 2014. The Notice is, however, automatically corrected pursuant to section 53 of the Act.

Pursuant to section 49(8) of the *Residential Tenancy Act* the tenants had 15 days from the date that they received the Notice to End Tenancy to dispute the Notice by filing an application for dispute resolution. The tenants did not apply to dispute the Notice to End Tenancy and as provided by section 49(9), they are therefore conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must move out by that date.

The tenants did not move out as required and the landlord was obliged to apply for an order for possession. The landlord accepted rent for February and I therefore find that the landlord is entitled to an order for possession effective February 28, 2014. The tenants are still entitled to the compensation required by section 51(1) of the Act and the landlord must refund the tenants' rent payment for February before February 28, 2014.

### Conclusion

I find that the tenancy will end on February 28, 2014, pursuant to the undisputed Notice to End Tenancy dated November 30, 2013. I grant the landlord an order for possession effective February 28, 2014 after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that court.

The landlord is entitled to recover the \$50.00 filing fee for this application and he may deduct that sum from the refund of February rent that is due to the tenants.

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: February 13, 2014

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Residential Tenancy Branch

