



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPT, FF

### Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act ("Act"). The tenants applied for an order of possession for the rental unit and for recovery of the filing fee paid for this application.

The tenants, the landlord, and the landlord's legal counsel attended the hearing.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally via affirmed testimony, to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Are the tenants entitled to an order of possession for the rental unit and to recovery of the filing fee paid for this application?

### Background and Evidence

The undisputed evidence shows that the tenants signed a tenancy agreement with the landlord, for an effective start date of March 1, 2015, and monthly rent to be \$1800.00.

The undisputed evidence further shows that the tenants have not been able to move into the rental unit due to the landlord's preceding tenant's failure to vacate by February 28, 2015. For this reason, the tenants request an order of possession for the rental unit.

In response, the landlord's legal counsel stated that the landlord fully supports the tenants' application. In explanation, the legal counsel submitted that the preceding tenant agreed and gave notice to vacate the rental unit by February 28, 2015, and then refused to vacate, which meant that the tenants here could not move into the rental unit as per the tenancy agreement on the effective start date of March 1, 2015. The legal counsel submitted further that the preceding tenant has been served with a landlord's Notice to end the tenancy, and that the landlord has filed his own application for dispute resolution seeking to end this tenancy, further having sought to have the landlord's application joined with these tenants' application. It is noted that the hearing on the landlord's application for an order of possession for the rental unit and other relief is set for hearing on March 24, 2015, before another Arbitrator.

The legal counsel agreed that the tenants should be granted an immediate order of possession for the rental unit.

### Analysis

Section 54 of the Act states a tenant may make an application requesting an order of possession if the tenant, under the terms of a tenancy agreement, is entitled to occupy the rental unit and has not been allowed to do so by the landlord. Section 54(2) states that the director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

In the case before me, I find the tenants submitted sufficient evidence, along with the landlord's confirmation, that the tenants were entitled to take occupancy and possession of the rental unit in question on March 1, 2015. I find further the evidence shows that the landlord has not provided the rental unit as agreed upon due to the landlord's reliance upon the notice to vacate by the tenant currently occupying the rental unit by February 28, 2015, and their failure to do so.

Therefore, I Order that the landlord provide the tenants with immediate possession of the rental unit. I further grant the tenants an order of possession for the rental unit, effective immediately; however, the tenants are advised that their order of possession cannot be enforceable against the preceding tenants, only against the respondent/landlord, as there is no privity of contract or standing between these

applicants and the landlord's current tenant. The order of possession for the rental unit becomes enforceable if and when the landlord obtains vacant possession of the rental unit from the preceding tenant, if for any reason the landlord fails to allow the tenants to move in. The order of possession is enclosed with the tenants' Decision.

As the tenants were successful with their application, I award them recovery of their filing fee, pursuant to section 72(1) of the Act, and consequently, issue the tenants a monetary order in the amount of \$50.00. The monetary order is enclosed with the tenants' Decision.

### Conclusion

The tenants' application for an order of possession for the rental unit and recovery of their filing fee was granted.

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: March 20, 2015

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Residential Tenancy Branch

