



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      mndc, o, ff,

### Introduction

The landlord applies for an Order of Possession and a Monetary Order, related to a breach of a mutual agreement by the tenants.

The tenants did not attend the hearing. I accept the landlord's testimony that the tenants were personally served with notice of this hearing.

### Issues to Be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary award?

### Background and Evidence

This tenancy began on November 1, 2014. Monthly rent was \$700.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$300.00 was paid. On January 29, 2015, the parties entered into a mutual agreement, which included the following terms:

- The tenants would vacate the premises February 28, 2015;
- The landlords would pay the tenants \$700.00;
- No rent for February was payable;
- The deposit would be retained by the landlord.

The landlords paid the tenants \$700.00 as promised, and no rent was paid for February. The tenants did not vacate the premises until March 31, 2015, and paid no further rent to the landlord. The landlords now seek recovery of the money paid to the tenants, as well as the lost rental income for February and March.

### Analysis

As the tenants have now vacated, no Order of Possession is required and that portion of the claim is dismissed.

The mutual agreement was a valid and binding exchange of promises as between the landlords and tenants. The payment of the \$700.00 to the tenants, and the agreement that no rent needed to be paid for February were terms of the mutual agreement that were conditional upon the fundamental term that the tenants vacate by February 28, 2015. The landlords fulfilled their end of the agreement, but the tenants failed to vacate as promised. The failure of the tenants to vacate by February 28, 2015 was a breach by the tenants of a material term of the agreement, entitling the landlord to consider the agreement to be discharged and to claim damages for such breach.

I find that the tenants must repay to the landlords the sum of \$700.00, representing the moneys advanced to the tenants as part of the consideration for their vacancy. The tenants must also pay to the landlords the sum of \$1,400.00 representing the loss of rental income suffered by the landlord for February and March. The tenants must also pay a further \$50.00, as recovery of the landlords of the \$50.00 filing fee.

#### Conclusion

The claim for an Order of Possession is dismissed. The tenants must pay the landlords the sum of \$2,150.00.

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 09, 2015

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Residential Tenancy Branch

