



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding S & D PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPL, FF, O

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for landlords use of the property and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The parties agreed that this tenancy started on November 11, 2013. Rent for this unit is \$750.00 per month due on the 1<sup>st</sup> day of each month.

The landlord testified that he had served the tenants with a Two Month Notice to End Tenancy for landlord's use of the property On June 08, 2014. The Notice was effective

on August 31, 2014. The tenants filed an application to dispute the notice and a hearing was held in August, 2014. At that hearing the Arbitrator found the landlord had a valid reason to end the tenancy and dismissed the tenants' application. The landlord testified that at the time he was not aware that he could have asked for an Order of Possession.

The landlord testified that he was working with the tenants to give them opportunity to move from the unit and even returned their security deposit to help them, but the tenants have still not vacated. The landlord agreed that he has accepted rent from the tenants but states some of the rent cheques have not been chased. The landlord agreed that he did not inform the tenants that he was accepting the rent for use and occupancy and that he was not reinstating the tenancy.

The tenants testified that they have been paying rent each month and this goes directly to the landlord from the Ministry. The tenants testified that they have proof that the landlord has been cashing the cheques. The tenants testified that they are looking for alternative housing but they are having difficulty finding anything.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I find the landlord did serve the tenants with the Two Month Notice to End Tenancy and this was dealt with under the previous decision [file number located on the front page of this decision]. The tenants had applied to cancel the Notice and their application was dismissed. The Arbitrator found the Notice was valid and enforceable. The landlord has not applied for an Order of Possession until a year after the Two Month Notice was originally served. While the Two Month Notice may still be considered to be valid even though the landlord has not acted in a timely manner in applying for an Order of Possession; I find the landlord has continued to accept rent from the tenants for this unit and has not informed the tenants in writing or by any other means that this rent was accepted for use and occupancy only and did not reinstate the tenancy.

Consequently, I find the tenants could reasonably assume that the landlord has reinstated the tenancy by accepting their rent past the effective date of the Notice. I therefore find the landlord's application for an Order of Possession is dismissed.

The landlord is at liberty to serve the tenants with a new Two Month Notice to End Tenancy.

### Conclusion

The landlord has reinstated the tenancy and therefore the landlord's application is dismissed.

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: July 08, 2015

---

Residential Tenancy Branch

