



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for landlord's use of property. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

During the hearing, the parties reached a mutual agreement in resolution of this matter. I have recorded the mutual agreement by way of this decision and the Orders that accompany it.

### Issue(s) to be Decided

What are the terms of the mutual agreement?

### Background and Evidence

The tenant has been residing in the rental unit since November 2011 but was paying rent to another tenant living in the upper unit of the house until June or July 2012. In June or July 2012 the upper tenant moved out and the tenant began paying rent of \$700.00 the landlords on the first day of every month. The parties did not execute a written tenancy agreement.

It was undisputed that the landlords served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property on August 28, 2016 with an effective date of October 31, 2016 (the 2 Month Notice). The tenant did not file to dispute the 2 Month Notice and withheld rent for October 2016 in satisfaction of compensation payable to a tenant who receives a 2 Month Notice. The tenant did not vacate the rental unit and has continued to occupy the rental unit. The tenant submitted that the lack of rental

housing in the area is the reason he has not moved. However, the tenant has not paid the landlords any monies for his continued use and occupation of the rental unit.

During the hearing, the parties reached the following agreement:

1. The effective date of the 2 Month Notice will be extended to February 1, 2017 conditional upon the tenant paying rent for the months of November 2016, December 2016 and January 2017, as provided in term #2 below. The landlords are provided an Order of Possession effective February 1, 2017 to serve and enforce as necessary.
2. The rent for November 2016 and December 2016, in the sum of \$1,400.00, will be paid to the landlords on or before December 22, 2016. The rent for January 2017, in the amount of \$700.00, will be paid to the landlords on or before January 1, 2017.
3. Should the tenant fail to meet his obligations under term #2 above, the landlords may serve and enforce an Order of Possession effective that is effective two (2) days after service.
4. For the remainder of this tenancy, the landlords must serve the tenant with a written 24 hour notice of entry in accordance with section 29(1)(b) of the Act. Where the landlords have served the tenant with a proper notice of entry, the tenant must not interfere with the landlord's right to enter.

### Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing and I make the terms an Order to be binding upon both parties.

In recognition of the mutual agreement, I provide the landlords with two Orders of Possession, as follows:

- An Order of Possession with an effective date of February 1, 2017 that may be served upon the tenant at any time.
- A conditional Order of Possession that may only be served and enforced in the event the tenant fails to meet his payment obligations under term #2 of the mutual agreement recorded earlier in this decision. Should the tenant fulfill all of

his payment obligations this conditional Order of Possession becomes null and void.

In recognition that the tenant has already received the compensation payable under section 51(1) by withholding rent for October 2016 and has continued to benefit from use and occupation of the rental unit in November 2016 and December 2016 I provide the landlord with a Monetary Order in the amount of \$1,400.00 to serve and enforce in the event the tenant fails to fulfill his obligation to pay this amount by December 22, 2016. Should the tenant fail to pay January 2017 rent and continue to occupy the rental unit in January 2017 the landlords are at liberty to file another application to seek a Monetary Order for January 2017 rent.

Below, I have reproduced section 29 of the Act for the parties' further reference, with my emphasis on 29(1)(b).

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

### Conclusion

The parties resolved this matter by way of a mutual agreement that I have recorded by way of this decision and the Orders that accompany it. The landlords have been provided an Order of Possession with an effective date of February 1, 2017 and a conditional Order of Possession that is effective two (2) days after service upon the tenant. The landlords have also been provided a Monetary Order in the sum of \$1,400.00 to serve and enforce in the event the tenant fails to pay \$1,400.00 as agreed.

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: December 20, 2016

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Residential Tenancy Branch