



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for an order of possession.

The tenant and the tenant's advocate attended the hearing. As the landlords did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant's advocate stated that the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on November 26, 2019, a Canada post tracking number was provided as evidence of service. The advocate stated that the package was returned unclaimed.

The tenant's advocate stated that the package was sent to the mailing address that is listed on the land titled document and BC Assessment Notice for the subject property. Filed in evidence are copies of the said documents.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later after it was mailed. I find that the landlords have been duly served in accordance with the Act. Refusal or neglect to pick up the package does not override the deemed served provisions of the Act.

### Issue to be Decided

Is the tenant entitled to an order of possession?

### Background and Evidence

The tenancy began on October 2018. Rent in the amount of \$700.00 was payable on the first of each month. A security deposit of \$325.00 was paid by the tenant.

The tenant testified that they paid their rent for October 2019; however, they had to go out of town in early October 2019, to be a witness in a court proceeding. The tenant testified that when they came back on November 2, 2019, they had been locked out of the rental unit.

The tenant testified that the landlords had also received a portion of rent for November 2019, that was directly sent to the landlord through the Ministry and they had the remainder of rent when they were at the premises on November 2, 2019. The tenant stated that they were not given access to the unit and that all their belongings were in the unit, such as dishes and work tools.

The tenant testified that they had placed a letter on their door informing the landlords that they were going to be away and a contact number.

The advocate for the tenant stated that they had the landlord's HP's telephone number, and a secondary number. The advocate stated they called the landlords on November 4, 5, 22, 2019 and December 2, 4, 6, 11, 13, 2019. The advocate stated that they left messages on HP's voicemail; however, HP did not return any of their calls. The advocate stated when they talked to someone at the secondary number, the person said that they would give HP the message; however, those messages went unanswered.

The tenant's witness RP testified that they were aware that the tenant had to go away. RP stated that the tenant had placed a letter on their door to let everyone know that they would be away and a contact number; however, that was taken off the door one week before the tenant returned. RP stated that it was most likely removed by the landlords.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the unopposed evidence of the tenant, that they went away in October 2019, and when they returned to the rental unit they were locked out. I find the landlords have breached the Act, as they do not have the authority under the Act to lock out a tenant

simply because they feel entitled to do so. A tenancy can only end in accordance with the Act.

Further, the landlord has been left multiple messages from the tenant's advocate in the attempt to resolve this issue. I find it more likely than not that the landlords are simply ignoring this matter as they did not end the tenancy in accordance with the Act.

Furthermore, the landlords accepted a portion of the rent for November 2019, which the tenant did not have access during this time. The landlords had no right to keep this money, if the tenancy had in fact ended.

Based on the above, I find the landlords have breached the Act, when they locked the tenant out of the rental unit. Therefore, I find the tenant is entitled to an order of possession effective December 16, 2019, pursuant to section 54 of the Act. This order may be enforced in the Supreme Court.

As the landlords did not attend the hearing and I have no way to determine if the rental unit has been re-rented, and it appears that this is also a hotel, I find the Order of possession can also be for any other comparable unit that is vacant.

I further Order the landlords to return the tenant's personal property as they had no authority to keep them.

### Conclusion

The tenant is granted an order of possession.

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 16, 2019

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Residential Tenancy Branch