



# 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 the tenant's application for an Order of Possession for the rental unit. The tenant appeared for the hearing; however, there was no appearance on part of the landlord.

Since the landlord did not appear, I explored service of hearing documents upon the landlord. The tenant testified that he personally served the hearing documents to the landlord at the landlord's place of work on January 14, 2019. In support of his testimony, the tenant submitted a signed Proof of Service that was also signed by a witness. Based on the unopposed evidence before me, I accepted that the landlord was duly served with notification of this proceeding and I continued to hear from the tenant without the landlord present.

### Issue(s) to be Decided

Is the tenant entitled to an Order of Possession for the rental unit?

### Background and Evidence

The tenant gave affirmed testimony that his tenancy started in June 2019. The landlord collected a security deposit of \$375.00 and the tenant is required to pay rent of \$775.00 on the first day of every month.

The tenant testified that he had paid rent for December 2019 but that rent for January 2020 had not been paid. The landlord had the locks changed on the rental unit on or about January 8, 2020. The landlord gave the tenant access to the rental unit one time on January 10, 2020 so that the tenant may retrieve some of his personal property. The tenant was able to pack up some warm clothing and hygiene products into a duffel bag but the rest of his possessions remained in the rental unit. The tenant made this application on January 10, 2020 and since then the tenant has found his items outside the rental unit.

The tenant testified that he was not served with a notice to end tenancy and he has the rent money for January 2020.

### Analysis

Section 54 of the Act provides that a tenant may apply for an Order of Possession. Section 54 provides:

#### **Order of possession for the tenant**

- 54** (1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.
- (2) 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.
- (3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

I was provided unopposed evidence that the tenant entered into a tenancy agreement with the landlord for a tenancy that started in June 2019. In entering into a tenancy agreement, both parties are obligated to fulfill the terms of the tenancy and comply with the Residential Tenancy Act and its Regulations.

Section 26 of the Act requires a tenant to pay rent when due under the tenancy agreement. Where a tenant fails to pay rent, the landlord's remedy under the Act is to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, as provided under section 46 of the Act. If the tenant does not pay the rent within five days of receiving the 10 Day Notice, the landlord may seek an Order of Possession, as provided under section 55 of the Act by making an Application for Dispute Resolution to the Residential Tenancy Branch and if the tenant does not comply with the Order of Possession, the landlord may apply for a Writ of Possession (a court order) and have the court bailiff enforce the court's order.

While the tenant failed to comply with requirement to pay rent for January 2020 when due, the tenancy was not ended. Rather, a tenancy is not ended unless one of the circumstances of section 44 apply. In this case, I accept the unopposed testimony that the landlord did not serve the tenant with a notice to end tenancy and the tenant did not give me any indication he abandoned the rental unit. During a tenancy, the landlord does not have the right to take it upon himself to change the locks to the rental unit and seize or prevent access to the tenant's personal property. Accordingly, I find the landlord unlawfully took possession of the rental unit

and interfered with the tenant's ability to access his personal property. Therefore, I find the tenant is entitled to regain possession of the rental unit and I grant the tenant's request for an Order of Possession.

With this decision, I provide the tenant with an Order of Possession effective immediately upon service of the Order upon the landlord. Upon receipt of this Order, the landlord is expected to give the tenant keys to the new locks and allow the tenant to access and use the rental unit until such time the tenancy is lawfully ended and possession returned to the landlord in a lawful manner.

With this decision I have NOT given the tenant any authority to make deductions or withhold rent. As such, the tenant remains obligated to pay rent unless he obtains the legal right under the Act to withhold rent, such as the prior authorization given by an Arbitrator. Should the tenant not pay rent for January 2020 or any month thereafter, without the legal right to do so, the landlord remains at liberty to serve the tenant with 10 Day Notice to End Tenancy or Unpaid Rent, or any other appropriate notice to end tenancy in the approved form, as appropriate in the circumstance, and lawfully enforce such a notice.

#### Conclusion

The tenant is provided an Order of Possession effective IMMEDIATELY upon service of the order upon the landlord.

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: January 21, 2020

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Residential Tenancy Branch