



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPT, FF

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit as the tenants have been denied access; and
- recovery of the filing fee.

The tenants attended the hearing; however, the landlord did not attend.

The tenant, LB, stated she served the landlord with their application for dispute resolution and Notice of Hearing by personal service on July 11, 2020.

I accept the tenants' evidence that the landlord was properly served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenants were provided the opportunity to present their affirmed testimony and make submissions to me.

### Issue(s) to be Decided

Are the tenants entitled to an order of possession of the rental unit and recovery of the filing fee?

### Background and Evidence

The tenants submitted that they wanted the landlord to fulfill the rental contract agreed upon at the start of the tenancy, which in this case, was the use of the barn for their horses and to supply hay. The tenancy agreement shows that the “Horse Board Exterior” was separate from the main house, for an additional cost of \$125 per month, including hay. The tenants filed into evidence a copy of their tenancy agreement.

The tenants submitted that they are now being denied the use of the barn to board their horses, which is included as a facility on the tenancy agreement. As the landlord has denied them the use of the barn, they are required to board them separately at this time and to buy more expensive hay, for extra costs.

### Analysis

Section 54 of the Act states a tenant may make an application requesting an order of possession if the tenant, under the terms of a tenancy agreement, is entitled to occupy the rental unit and has been denied access by the landlord. Section 54(2) states that 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.

The tenants’ evidence and application show that they are currently living in the rental unit, which under the Act, is defined as their living accommodation.

In the case before me, as the landlord has not denied the tenants access to their rental unit, I find that they have submitted insufficient evidence to support their request for an order of possession. More specifically, the tenants’ claim in this case does not relate to the issue listed in their application. I find the tenants’ issue of being denied access to the separate horse barn is more directly related to their claim that they have been denied a facility agreed upon in the tenancy agreement.

### Conclusion

Due to the above, I dismiss the tenants’ application for an order of possession of the rental unit and their request for recovery of the filing fee.

The tenants are at liberty to file another application for dispute resolution seeking other remedy under the Act.

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 24, 2020

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Residential Tenancy Branch