



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

OPT

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which they applied for an Order of Possession.

The Tenant stated that on April 20, 2023 the Dispute Resolution Package was personally delivered to the Landlord's business address. The Agent for the Landlord acknowledged receipt of these documents.

On April 25, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on April 26, 2023. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On April 17, 2023 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that "she thinks" this evidence was sent to the Landlord with the Dispute Resolution Package. The Agent for the Landlord stated that evidence was not received with the Dispute Resolution Package. As the Tenant has submitted insufficient evidence to establish that this evidence was served and the Landlord does not acknowledge receiving the evidence, it was not accepted as evidence for these proceedings.

Some of the evidence submitted by the Tenant was also submitted in the Landlord's evidence package. The parties were advised that the Tenant may refer to her evidence during the hearing, at which time I will determine whether the Landlord is in possession of that evidence.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

### Preliminary Matter

The Tenant requested an adjournment for the purposes of submitting additional evidence. The Agent for the Tenant stated that the Tenant was unable to submit some documents related to the issue of jurisdiction because the Tenant was locked out of the rental unit and did not receive her personal property from the unit until April 20, 2023.

The Landlord agrees that the Tenant was prevented from returning to the rental unit on April 17, 2023 and that her belongings were moved to her new home on April 20, 2023.

The Landlord did not oppose the request for an adjournment.

In an effort to provide the Tenant with a fair and reasonable opportunity to be heard on the issue of jurisdiction, I concluded that it was reasonable to adjourn the hearing to provide the Tenant with the opportunity to submit evidence that she was not able to access until April 20, 2023. I find this to be reasonable, as a delay will not unduly disadvantage the Landlord.

### Issue(s) to be Decided:

Is the Tenant entitled to possession of the rental unit?

### Background and Evidence:

At the hearing the parties made several submissions regarding jurisdiction. There was insufficient time to conclude that matter prior to the conclusion of the hearing on May 01, 2023. The parties were advised that the issue of jurisdiction will continue to be discussed at the reconvened hearing.

Near the conclusion of the hearing the Agent for the Landlord stated that the rental unit has been re-rented to a third party. The Agent for the Tenant agrees the unit was rented to a third party.

Analysis:

After considering the issue in dispute at these proceedings, I have reassessed my decision to adjourn the hearing for the purpose of hearing additional evidence on the issue of jurisdiction.

I find that this matter can be determined without the need to determine jurisdiction and, as such, there is no need to reconvene the hearing. Regardless of the information provided at the hearing, the hearing will not be reconvened and this decision is the final and binding decision.

On the basis of the undisputed evidence that the rental unit has been rented to a third party, I find that an Order of Possession cannot be granted to the Tenant.

Even if I concluded that I had jurisdiction over this living arrangement, I would dismiss the application for an Order of Possession. Presuming the *Residential Tenancy Act (Act)* applies to this rental unit, the Landlord would not have grounds to end the tenancy of the third party renting the unit. As the Landlord would have no legal means of ending the tenancy of the third party, I cannot grant the Tenant authority to possess the unit.

Typically, in situations where the Tenant has been unlawfully evicted but possession of the unit cannot be granted to the Tenant, the only available recourse is for the Tenant to apply for monetary compensation.

As I would dismiss the application for an Order of Possession even if I have jurisdiction over this living arrangement, I find it is not necessary for me to determine jurisdiction. I therefore find there is no need to reconvene the hearing.

The Tenant retains the right to file another Application for Dispute Resolution in which she seeks compensation for being locked out of the unit. In the event the Tenant files another Application for Dispute Resolution, the issue of jurisdiction can be determined by the Arbitrator considering that claim.

Conclusion:

The application for an Order of Possession is dismissed, without leave to reapply.

The Tenant retains the right to file another Application for Dispute Resolution seeking compensation for being locked out of the unit.

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: May 01, 2023

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Residential Tenancy Branch