



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, OPC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and for cause pursuant to section 55; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:24 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that the landlord's agent handed an adult on the premises a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) and a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on March 30, 2012. The landlord testified that one of the Park Managers posted a copy of the landlord's dispute resolution hearing package on the tenants' door on May 13, 2012. She said that police attended the premises shortly thereafter and also noticed the package posted on the tenants' door. I am satisfied that the above documents were served by the landlord in accordance with the *Act*.

I am satisfied that the landlord's application for an end to this tenancy and an Order of Possession was served in accordance with section 89(2)(d) of the *Act*. At the hearing, I advised the landlord that I could not consider her application for any form of monetary Order, including her request for recovery of her filing fee, on the basis of her posting the application on the tenants' door. Service of these types of applications must be done pursuant to section 89(1) of the *Act* which does not allow service by posting on a door.

At the commencement of the hearing, the landlord testified that the male tenant paid the \$200.00 in rent identified on the 10 Day Notice as owing. Consequently, she withdrew her application for an Order of Possession based on the 10 Day Notice.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This periodic tenancy for the rental of a manufactured home to RE commenced on February 15, 2011. Monthly rent was set at \$500.00, payable on the first of each month. No security deposit was paid.

The landlord testified that the tenant died in a motor vehicle accident in August 2011. The male tenant who was living on the premises with the tenant remained in the rental unit, although no new tenancy agreement has been prepared. The landlord testified that she believes that female tenant AS also resides on the premises.

The landlord entered into written evidence a copy of the 1 Month Notice requiring the tenant to end this tenancy by April 30, 2012. The landlord cited the following reasons for the issuance of the Notice:

*Tenant is repeatedly late paying rent.*

*Tenant has allowed an unreasonable number of occupants in the unit/site*

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord...*

The landlord submitted written evidence outlining the basis for her application to end this tenancy for cause.

At the hearing, the landlord testified that the tenants have frequently been late in paying their monthly rent. She gave sworn oral testimony that the tenants paid their monthly rent due on the first of each month on the following dates:

Month	Payment Date	Rental Payment Amount
November 2011	Nov. 4, 2011	\$300.00
	Nov. 23, 2011	200.00
December 2011	Dec. 21, 2011	250.00
	Jan. 5, 2012	250.00
January 2012	Jan. 25, 2012	500.00
May 2012		Unpaid

I asked the landlord at the hearing to fax me a copy of the rent payments received from the tenants since November 1, 2011 to confirm her oral testimony and to assist me in writing my decision. She submitted this additional written evidence shortly after the hearing concluded. The tenants also appear to have been late in their rent payments for other recent months in addition to those outlined above.

#### Analysis

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

*Three late payments are the minimum number sufficient to justify a notice under these provisions...*

There is undisputed evidence that the tenancy agreement requires the tenants to pay all of the rent by the first of each month. The evidence presented indicates that the tenants have been late in paying their rent on at least three occasions. I am satisfied that the landlord has demonstrated that there is a pattern of late payment of rent throughout the recent portion of this tenancy.

On the basis of the landlord's undisputed evidence, I find that the landlord has grounds to end this tenancy on the basis of the 1 Month Notice for repeated late payment of rent. I issue an Order of Possession to the landlord. There is no need to consider the other grounds cited in the landlord's 1 Month Notice.

I dismiss the landlord's application to recover her filing fee as she did not serve this portion of her application in accordance with the *Act*.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for the recovery of her filing fee from the tenants.

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 31, 2012

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Residential Tenancy Branch