



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord: OPC, MNDC, FF  
Tenant: CNC, OLC, RP, RR, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession for repeatedly late rent payments, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy, for the landlord to comply with the Act, for a reduced rent, to make repairs to the unit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on December 23, 2012 in accordance with section 89 of the Act.

The Tenants did not attend the hearing. Consequently I dismiss the Tenants application without leave to reapply.

### Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and late fees and if so how much?

### Background and Evidence

This tenancy started on July 1, 2011 as a fixed term tenancy with an expiry date of June 30, 2012 and then continued on a month to month bases. Rent is \$1,043.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$500.00 on July 16, 2011. A pet deposit of \$250.00 was called for, but it was not paid.

During the start of the hearing the Landlord said the Tenants said they are moving out of the rental unit during January, 2013 and they have not paid the January, 2013 rent of \$1,043.00. As well the Landlord said the Tenants owe \$101.00 in late rent payments.

The Landlord said that the Tenants have been late with the rent payment 6 months in the last 8 months therefore the Landlord issued a 1 Month notice to End Tenancy for cause on November 30, 2012. The Notice to End Tenancy was dated November 30, 2012 with an effective vacancy date of December 31, 2012. The Landlord provided rent receipts that showed the rent had been paid late in the Months of June, August, September, October, November of 2012 and for January, 2013. The Landlord requested an Order of Possession for as soon as possible.

The Landlord continued to say they have not applied to retain the Tenants' security deposit.

The Landlord also said he is seeking to recover the \$50.00 filing fee for this proceeding. The Landlord concluded by saying their total claim is for \$1,043.00 in unpaid rent, \$101.00 in late fees and the \$50.00 filing fee for a total claim of \$1,194.00.

### Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy guideline #38 says the Act provides that a landlord may end a tenancy where the tenant is repeatedly late paying the rent and three late payments are the minimum number sufficient to justify a notice under these provisions.

I find that the Tenants have not paid the overdue rent, the Tenants have been repeatedly late with the rent payments and the Tenants do not have the right to withhold a part or all of the unpaid rent. The Tenants' application to dispute the Notice to End Tenancy, to have the landlord comply with the Act, for repair work to be done and for a rent reduction has been dismissed without leave to reapply. Consequently, I find for the Landlord and award the Landlord an Order of Possession and a Monetary Order for unpaid rent and late fees.

I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants and occupants.

I also find that the Landlords are entitled to recover unpaid rent for the month of January, 2013 in the amount of \$1,043.00 as well and \$101.00 in late fees for an amount of \$1,144.00.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. The Landlords will receive a monetary order for the balance owing as following:

Rent arrears:	\$1,043.00	
Late fees	\$ 101.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$1,194.00
Balance Owing		\$1,194.00

As the Tenants have been unsuccessful in this matter they are Ordered to bear the cost of the filing fee of \$50.00 which they have already paid.

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$1,194.00 have been issued to the Landlords. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed without leave to reapply.

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 14, 2013

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Residential Tenancy Branch

