



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services and Royal Providence Management Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OPC, FF

### Introduction

This was a hearing with respect applications by the landlord and by the tenants. The landlord applied for an order for possession pursuant to a one month Notice to End Tenancy for cause. The tenants applied to cancel the Notice to End Tenancy. The hearing was conducted by conference call. The landlord's representatives and the tenants called in and participated in the hearing.

### Issue(s) to be Decided

Should the Notice to End Tenancy dated March 8, 2013 be cancelled?  
Is the landlord entitled to an order for possession?

### Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began on November 23, 2013. Monthly rent is \$1,150.00 payable on the first day of each month. There was a previous hearing with respect to this tenancy on February 19, 2013. It was the hearing of the landlord's application for an order for possession and a monetary order for unpaid rent. The landlord's application was dismissed. As set out in the previous decision, January rent was not paid on January 1, 2013. On or about January 6, 2013 the tenants delivered post dated cheques to the landlord. The cheques for February, March and April were each payable on the 5<sup>th</sup> day of the month. The landlord's representative testified that he told the tenants that rent was due on the first of each month and the cheques must be replaced, otherwise the rent would be consider as paid late. The cheques were not replaced. On March 8, 2013 the landlord's representative personally served one of the tenants with a one month Notice to End Tenancy for cause. The cause alleged was that the tenants have been repeatedly late paying rent.

The tenants applied to dispute the Notice to End Tenancy. They said in their application for dispute resolution that they are getting evicted for late payment yet they have already prepaid the rent. At the hearing the tenants said that they are prepared to meet with the landlord and make arrangements to ensure that the rent is paid on the first of the month in future.

The landlord is not interested in continuing the tenancy. The landlord's representative said that the tenants were explicitly told that the post-dated cheques constituted late payments and must be replaced if the tenancy was to continue, but the tenants have not responded until the hearing.

### Analysis

*The Residential Tenancy Act* provides by section 47 (1) (b) that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Policy Guideline #38 states that: "Three late payments are the minimum number sufficient to justify a notice under these provisions." The policy guideline also contains the following comments:

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision

The *Act* does not define what constitutes "repeatedly late". The policy guide says that three late payments are the minimum that would warrant the issuance of a Notice. The guideline also states that exceptional circumstances may be taken into account when determining whether a tenant has been repeatedly late paying rent. I find that the postdated cheques given by the tenants constitute late payments. The tenants were

warned about the post-dated cheques, but did not correct the situation. They were late paying rent in January and have been late each month thereafter. I therefore decline to cancel the Notice to End Tenancy and I dismiss the tenant's application. The landlord has applied for an order for possession pursuant to the Notice to End Tenancy. I find that the landlord is entitled to an order for possession effective April 30, 2013 after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The landlord is entitled to recover the \$50.00 filing fee for its application and may deduct the said sum from the security deposit that it holds.

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: April 09, 2013

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Residential Tenancy Branch

