



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, RP, LAT, FF, SS, O

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- authorization to serve documents or evidence in a different way than required by the *Act* pursuant to section 71;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Tenant MFK confirmed that one of the landlords handed him the 1 Month Notice on March 26, 2013. The female landlord (the landlord) confirmed that the tenants handed her a copy of the tenants' dispute resolution hearing package on April 5, 2013. I am satisfied that the parties served one another the above documents and their written evidence packages in accordance with the *Act*. The tenants also provided the landlords with a flash drive containing their evidence, which the landlord confirmed she had received and reviewed in advance of this hearing.

At the hearing, the landlord and her agent (the agent) requested an Order of Possession to take effect by May 31, 2013, if the tenants' application to cancel the 1 Month Notice were dismissed.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any orders be issued with respect to this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The parties signed a Residential Tenancy Agreement (the Agreement) on or about June 16, 2008, which enabled the tenants to take possession of this rental unit by July 1, 2008. According to the terms of the Agreement entered into written evidence by the landlords, monthly rent was set at \$800.00, payable in advance by the first of each month, plus utilities. The landlords continue to hold the tenants' \$400.00 security deposit paid on June 16, 2008.

Although the tenants entered only the first page of the landlords' 1 Month Notice into written evidence, both parties confirmed that the landlords' 1 Month Notice identified the following reasons for seeking an end to this tenancy for cause:

*Tenant is repeatedly late paying rent.*

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

- significantly interfered with or unreasonably disturbed another occupant or the landlord;*

I advised the parties that I would first hear their sworn testimony with respect to the landlords' claim that the tenants were repeatedly late in paying their rent. If necessary, I would then proceed to hear evidence with respect to the second of the reasons cited in the landlords' 1 Month Notice.

Both parties provided written evidence that the tenants have been late in paying their monthly rent very frequently. The landlords entered undisputed sworn testimony and written evidence of the following late rental payments for the period from November 2012 until April 2013:

<b>Date of Tenants' Direct Deposit Rent Payments</b>	<b>Amount of Payment</b>
November 13, 2012 Rent Payment	\$500.00
November 14, 2012 Rent Payment	450.48
December 6, 2012 Rent Payments (\$500.00 & \$450.48 = \$950.48)	950.48
January 10, 2013 Rent Payment	500.00
January 15, 2013 Rent Payment	450.48

February 11, 2013 Rent Payments (\$500.00 & \$450.48 = \$950.48)	950.48
March 11, 2013 Rent Payments (\$500.00 & \$450.48 = \$950.48)	950.48
April 3, 2013 Rent Payment	950.48

The landlords entered written evidence of copies of their bank account transactions for each of the above deposits.

The tenants did not dispute the agent's assertion that each of the above rent payments were by way of direct deposits by the tenants into the landlords' bank account. The tenants did not dispute the landlords' claim that their Agreement calls for the tenants' payment of rent by the first of each month, nor did they dispute the landlords' sworn testimony and detailed written evidence that they have been typically late in paying their monthly rent. Rather, the tenants asserted that the landlords had allowed them to pay their rent late during this tenancy and, as such, had given them their oral agreement to let them pay their rent late. They said that the landlords never acted on their late payment of rent until the landlords issued the 1 Month Notice.

Near the end of this hearing, Tenant MEA (the tenant) gave new sworn testimony that the tenants had actually been paying their monthly rent one month in advance every month since the beginning of this tenancy. He testified that the tenants paid their \$400 security deposit and their first month's rent on June 16, 2008, when they signed the Agreement. He testified that the records of the tenants' payments they entered into evidence by way of a document they prepared showed that they made their August 2008 rent payments on July 11, 2008. The landlord and her agent denied that any such rent payment was made during July 2008 for rent owing in August 2008.

During this phase of the hearing, the tenant referred to the digital evidence the tenants had created. However, in reviewing this evidence, the tenant said that the record the tenants had created for the early stages of this tenancy did not appear to be accurate. He agreed with the landlord's observation that the first payment made to the landlords was on June 16 or 17, 2008, and that no payments were made in May 2008, as was implied by the tenants' written evidence. He also did not deny the landlord's assertion that the records that the tenants were showing in this document created by the tenants referenced utility payments that were made at the initial stages of this tenancy. The tenant then stated that the July 2008 payment in advance for August 2008 was a cash payment and there was no record of that payment in the document he had prepared for this hearing.

### Analysis

Section 47(1)(b) of the *Act* enables a landlord to end a tenancy for cause if “the tenant is repeatedly late paying rent.” Residential Tenancy Branch (RTB) 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...*

*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...*

There is clear evidence that the written 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 many occasions during this tenancy.

In considering this matter, I give little weight to the tenant’s very late claim that the tenants had been paying their monthly rent in advance since the first month of this tenancy. I do so because of the timing of the tenant’s assertion and the frequent revisions in his testimony. I find the tenants’ written evidence with respect to the timing of the tenants’ payment of their rent far less credible than the landlords’ written evidence in this regard. In making this determination I note that the tenants’ document was one that they created and admitted was incorrect when questioned on the initial portion of this tenancy.

The most credible sworn testimony I heard from the tenants during this hearing was Tenant MFK’s admission near the end of this hearing that the tenants have been “struggling to pay rent” during their tenancy.

Tenant MFK gave sworn testimony that the female landlord sent the tenants an email in October 2012, letting the tenants know that she wanted to receive the tenants rent by at least the 10<sup>th</sup> of each month in the future. As outlined in the landlords’ written evidence, the tenants were not able to meet this emailed request as they have failed to complete their monthly rent payments even by the 10<sup>th</sup> of the month for most of the months following October 2012.

In accordance with RTB Policy Guideline #38, I find that there is no question that there has been a pattern of late payment of rent during this tenancy. I do not accept that the landlords entered into any oral agreement to allow the tenants to change the due date for their rental payments, set as the first of the month in the Agreement the parties signed when this tenancy commenced. While the landlords could have acted on this

matter much earlier, I do not find that their failure to take action earlier prevents them from seeking an end to this tenancy on the basis of late payment of rent. Even when the tenants acknowledged that they were advised that the landlords were raising concerns about the timeliness of the tenants' monthly rent payments, the tenants continued to make late rent payments.

Under these circumstances, I find that the landlords had a valid reason to issue the 1 Month Notice to end this tenancy for repeated late payment of rent. For this reason, I dismiss the tenant's application to cancel the landlord's 1 Month Notice.

There was no need to consider the landlords' other reason for seeking an end to this tenancy as the landlords need only demonstrate one valid reason for ending this tenancy on the basis of the 1 Month Notice.

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

Since the tenants' application to cancel the 1 Month Notice has been dismissed and the landlords have requested an Order of Possession on the basis of the 1 Month Notice, I issue an Order of Possession to the landlords effective May 31, 2013.

As this tenancy is ending shortly, I have not considered the tenants application for the issuance of orders against the landlords.

Since the tenants have been unsuccessful in their application for dispute resolution, they bear the costs of their filing fee for their application.

### Conclusion

I dismiss the tenants' application to cancel the landlords' 1 Month Notice. I issue the attached Order of Possession which takes effect by 1:00 p.m. on May 31, 2013. 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 remainder of the tenants' application without leave to reapply.

This final and binding 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 30, 2013

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Residential Tenancy Branch