



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1963 Investments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). 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. The tenant confirmed that a representative of the landlords handed her the 1 Month Notice on May 17, 2013. The landlords confirmed that the tenant handed one of the landlord's representatives a copy of her dispute resolution hearing package on May 28, 2013. The tenant confirmed that she received a copy of the landlords' written evidence. I am satisfied that the above documents and all evidence were served to the parties in accordance with the *Act*.

At the beginning of this hearing, Landlord AS (the landlord) asked for an Order of Possession if the tenant's application to cancel the 1 Month Notice were dismissed.

### Issues(s) to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

### Background and Evidence

This three-month fixed term tenancy for a one bedroom unit in a 47-unit rental building started on July 1, 2012. After the end of the initial term, the tenancy continued as a periodic tenancy. Monthly rent is currently set at \$600.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$300.00 security deposit paid on July 1, 2012.

The tenant entered into written evidence a copy of the 1 Month Notice issued on May 17, 2013. In that Notice, requiring the tenant to end this tenancy by June 17, 2013, the landlords cited the following reason for the issuance of the Notice:

*Tenant is repeatedly late paying rent*

I noted at the hearing that the effective date of the end to this tenancy was in error as this tenancy could not end before June 30, 2013. The parties agreed that the landlords accepted a \$600.00 payment for “use” only for June 2013, and not to reinstate this tenancy.

At the hearing, the parties discussed three debit card receipts entered into written evidence by the landlords with respect to the tenant’s rent payments for December 2012, January 2013 and April 2013. The landlords claimed that the date and time of the debit card payments clearly indicated that the tenant made the above payments on December 3, 2012 at 10:31:20 a.m., on January 16, 2013 at 11:58:40 a.m., and on April 2, 2013 at 13:29:08 p.m. They also testified that the tenant has not yet paid \$50.00, still owing from December 2012. Landlord JC testified that the receipt issued to the tenant for rent for December 2012, showed a balance owing of \$50.00.

The tenant testified that her December 2012 rent payment was made to the landlords’ representative on December 1, 2012. She said that she paid the remaining \$50.00 cash to the landlords’ representative likely before December 1, 2012. She said that she was not given a receipt for the \$50.00 cash payment.

#### Analysis

Residential Tenancy Branch 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. 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...*

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute after the parties had presented their sworn testimony.

Both parties agreed to a final and binding resolution of all issues arising out of this tenancy at this time under the following terms:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on July 31, 2013, by which time the tenant will have vacated the rental unit.
2. The tenant agreed to pay the landlords her monthly rent of \$600.00 by July 1, 2013 in accordance with the terms of her Residential Tenancy Agreement with the landlords and to be accepted by the landlords for use and occupancy only.
3. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues currently under dispute arising out of this tenancy.

#### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlords if the tenant does not vacate the rental premises in accordance with their agreement. The landlords are provided with these Orders in the above terms and the tenant must be served with this Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 24, 2013

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Residential Tenancy Branch