



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sutton Group Property Management Division  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      For the tenant: CNC, MNDC, MNR, AAT  
For the landlord: OPC

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenants applied for an order cancelling the landlord’s 1 Month Notice to End Tenancy for Cause (the “Notice”), a monetary order for money owed or compensation for damage or loss and a monetary order for the cost of emergency repairs, and an order requiring the landlord to allow access to the rental unit.

The landlord applied for an order of possession for the rental unit due to alleged cause.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence; however during the hearing the tenant referred to documentary evidence he said was submitted 1 business day prior to the hearing. The tenant confirmed that he had not sent this evidence to the landlord. As the tenants failed to comply with the Dispute Resolution Rules of Procedure (Rules) in sending evidence to both the Residential Tenancy Branch (“RTB”) and the other party, and in sending their evidence at least 5 business days prior to the hearing, I have excluded the tenant’s further documentary evidence from consideration.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*As a preliminary issue*, I have determined that the portion of the tenants' application dealing with a request for monetary compensation and an order requiring the landlord to allow access to the rental unit are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenants' Application and dismissed that portion of the application, with leave to reapply.

The hearing proceeded only upon the tenants' application to cancel a Notice to End Tenancy for Cause and on the landlord's application seeking an order of possession for the rental unit.

#### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice to End Tenancy for Cause?

Is the landlord entitled to an order of possession for the rental unit based upon their 1 Month Notice to End Tenancy for Cause?

#### Background and Evidence

The landlord's undisputed evidence shows that this tenancy began on February 1, 2011, monthly rent is \$700, and the tenant paid a security deposit of \$350 at the start of the tenancy.

The landlord said that the security deposit has previously been returned to the tenants.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support the Notice.

The landlord's agent said that the tenants were served a 1 Month Notice to End Tenancy for Cause on June 24, 2013 by posting it on the tenants' door; the male tenant confirmed receiving the Notice on that day.

The Notice explains that the tenants had 10 days to dispute the Notice. It also explains that if the tenants do not file an application to dispute the Notice within 10 days, then the tenants are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice. The effective move out date listed on the Notice was July 31, 2013.

The tenants filed an application to dispute the Notice on July 31, 2013.

The causes as stated on the Notice alleged that the tenants had seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk and has caused extraordinary damage to the rental unit.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

#### *Landlord's application-*

I find that the tenants were properly served a 1 Month Notice for Cause on June 24, 2013, pursuant to section 47 of the Act, and had 10 days, or until July 4, 2013 to make an application to dispute the Notice; instead the tenants applied to dispute the Notice on July 31, 2013. Therefore pursuant to section 47(5) of the Act, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, in this case July 31, 2013, and must move out of the rental unit.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective 2 days after service upon the tenants and have enclosed the order with the landlord's Decision.

#### *Tenants' application-*

As I have granted the landlord's application for dispute resolution and granted them an order of possession for the rental unit, I dismiss the tenants' application seeking cancellation of the Notice, without leave to reapply.

### Conclusion

The landlord's application has been granted.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement may be recoverable from the tenants.

The portion of the tenants' application seeking cancellation of the Notice is dismissed without leave to reapply.

The portion of the tenants' application seeking monetary compensation and an order requiring the landlord to allow access to the rental unit is dismissed, with 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: September 10, 2013

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Residential Tenancy Branch

