



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding New Chelsea Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord society and an observer attended the conference call hearing however the tenant did not attend. The landlord's agent was affirmed and testified that the tenant was served with the notice of hearing and evidence package on January 2, 2014 by registered mail and again personally on January 22, 2014 and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

### Background and Evidence

This month-to-month tenancy began on August 1, 2009 and the tenant still resides in the rental unit. Rent is subsidized, and the tenant's portion is \$415.00 per month payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy, the landlord collected a security deposit in the amount of \$450.00 which is still held in trust by the landlord. A copy of the tenancy agreement has been provided.

The landlord's agent testified that the tenant has been repeatedly late paying rent, and on December 10, 2013 the tenant was served with a 1 Month Notice to End Tenancy for Cause by registered mail. A copy of the notice has been provided, and it is dated

December 10, 2013 with an effective date of vacancy of January 31, 2014. The reason for issuing the notice is, "Tenant is repeatedly late paying rent." The landlord has also provided a copy of the Canada Post receipt with a tracking number as evidence of service.

The landlord applied for dispute resolution on December 30, 2013 seeking an Order of Possession, and on January 2, 2014 sent the hearing package to the tenant by registered mail. The hearing package contained a letter from the landlord to the tenant, a copy of the tenancy agreement, a copy of a previous breach letter provided to the tenant, copies of previous 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, a copy of a rent review letter and a copy of the 1 Month Notice to End Tenancy for Cause dated December 10, 2013.

The documents provided to the tenant were also provided to the Residential Tenancy Branch. The previous 10 Day Notices to End Tenancy for Unpaid Rent or Utilities are for the months of August, November and December, 2013. The breach letter quotes those months as well as June and July, 2013 that the tenant was late paying rent, and also states that payment of rent in full on the 1<sup>st</sup> day of each month is a material term of the tenancy agreement.

On January 17, 2014 the landlord was notified by the post office that the tenant had not picked up the registered mail that contained the 1 Month Notice to End Tenancy for Cause and it was returned to the landlord undelivered.

On January 22, 2014 the tenant was again served, personally, with the evidence package which included the notice to end tenancy, Landlord Application for Dispute Resolution and notice of hearing. The parties had a conversation at that time and the tenant admitted to receiving the notification of registered mail, but failed to claim it from the post office. The parties agreed that if rent for February, 2014 was paid, the tenant could stay in the rental unit until February 28, 2014, but the tenant has not yet paid the rent.

The landlord has not been served by the tenant with an application for dispute resolution, and the landlord's agent does believe the tenant has disputed the notice to end tenancy.

### Analysis

The *Residential Tenancy Act* states that if a tenant does not dispute a notice to end tenancy for cause given by a landlord within 10 days of service, the tenant is

conclusively presumed to have accepted that the tenancy ends on the effective date of vacancy contained in that notice and the tenant must move out by that date.

The *Act* also states that a person served by registered mail is deemed to have been served 5 days after such mailing. However, knowing that the tenant did not receive the notice to end tenancy that was issued on December 10, 2013, and that the tenant received it twice in January, 2014, I find that the tenant did not receive sufficient notice to vacate the rental unit by January 31, 2014, the effective vacancy date quoted in the notice. The *Act* also states that incorrect effective dates in a notice to end tenancy are automatically changed to the nearest date that complies with the law, which I find is February 28, 2014. The tenant did not dispute the notice, and therefore, I find that the tenant is conclusively presumed to have accepted that the tenancy ends.

I am also satisfied in the evidence that the tenant has been repeatedly late paying rent.

I find that the landlord is entitled to an Order of Possession effective February 28, 2014 at 1:00 p.m.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective February 28, 2014 at 1:00 p.m.

I further grant a monetary order in favour of the landlord in the amount of \$50.00.

These orders are final and binding on the parties and may be enforced.

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: February 18, 2014

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Residential Tenancy Branch

