



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 556768 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, OPB, MND, MNSD, CNC, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by both the Landlord and Tenants. The Tenants applied to cancel a notice to end tenancy for cause and to recover the filing fee. The Landlord applied for an Order of Possession based on cause and the Tenants breaching an agreement with the Landlord. The Landlord also applied for a Monetary Order for damage to the rental unit, to keep the Tenants' security and pet damage deposits, and to recover the filing fee for the cost of making the application.

The Landlord, also representing the Landlord's company appeared for the hearing with the Tenants and both parties provided affirmed testimony during the hearing and documentary evidence in advance of the hearing. No issues in relation to the service of the hearing documents and evidence under the Residential Tenancy Act (the "Act") or the Rules of Procedure were raised by any of the parties.

### Preliminary Matters

At the start of the hearing the Landlord indicated she had an agreement with the Tenants that they would be leaving at the end of March, 2014 as they had purchased a property and did not take occupancy until the end of this month. However, the Landlord testified that according to the vacancy date on the 1 Month Notice to End Tenancy for Cause (the "Notice"), the Tenants should have left at the end of February, 2014 but have not because they needed an extra month to stay in the rental suite before moving to their new home and this is the motive behind the Tenants disputing the Notice.

The Landlord testified that she had to make the application for an Order of Possession as the Tenant's had disputed the notice and may not move out at the end of the March, 2014 as they had indicated.

The female Tenant testified that this was correct and that they were going to leave by the end of March, 2014. As a result, the Landlord and Tenant agreed that the tenancy will end at **1:00 pm on March 31, 2014** and the Tenant was agreeable to the Landlord being issued with an Order of Possession for this date and time, which the Landlord can enforce if the Tenants fail to leave.

As a result, I dismissed the Tenant's application in full and dismissed the Landlord's application requesting an Order of Possession.

In relation to the Landlord's claim for damage to the rental suite and the return of the security deposit, the Landlord decided to deal with these issues at the end of the tenancy and as a result withdrew these two monetary portions of her application. The Landlord has leave to re-apply for damage to the rental suite and the keeping of the Tenants' deposits at the end of the tenancy.

The Tenants were cautioned in relation to their obligations when leaving the rental unit at the end of the tenancy in accordance with Section 37 of the Act which requires the suite to be left reasonably clean and undamaged. Both parties were also cautioned regarding the rights and obligations for the return of the security deposit at the end of the tenancy, pursuant to Section 38 and 39 of the Act and that these still apply.

The date a Notice takes effect was explained to the Landlord during the hearing. When the Landlord served this Notice personally to the Tenants on January 31, 2014, which is the day of the month that rent is due under the tenancy agreement, the Landlord needs to allow one full rental months of the notice period (not one full calendar month) pursuant to Section 47(2) (b) of the Act. Section 53(3) allows the effective date of vacancy on the Notice to be automatically corrected from February 28, 2014 to March, 31, 2014. A Landlord is required to be aware of these provisions before issuing such a Notice.

However, this information also applies to the Tenants and as they had made an application to dispute the Notice, intending to vacate the rental suite at the end of March, 2014, I find that the Landlord had no choice but to make the application for the Order of Possession. As a result, I am prepared to award the Landlord half of the filing fee for the cost of making the application.

The Landlord and Tenant also set a time and date for the condition inspection report to take place and the Tenants provided a mailing address only for the purposes of receiving this decision. The parties were informed of the requirement to submit evidence again for any further hearings in accordance with the Rules of Procedure.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the Landlord effective **March 31, 2014 at 1:00 p.m.**

The Landlord is able to deduct \$25.00 from the Tenant's security deposit in order to recover part of the cost of making the application pursuant to Section 72(2) (b) of the Act.

The Landlord's application for the monetary portion is dismissed with leave to re-apply.

The Tenants' application is dismissed without leave to re-apply.

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: March 24, 2014

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Residential Tenancy Branch

