



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 12, 2014, by the Landlords to obtain an Order of Possession for cause and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Have the Landlords proven entitlement to an Order of Possession?

### Background and Evidence

Each party submitted evidence which supports that they entered into a fixed term tenancy agreement that began on February 2, 2013 and switched to a month to month tenancy after February 1, 2014. Rent was payable on the first of each month in the amount of \$1,600.00 and on February 2, 2013 the Tenant paid \$800.00 as the security deposit.

It was undisputed that the Landlord personally served the Tenant with a 1 Month Notice to end tenancy, pursuant to Section 47(1) of the Act, for the following reason(s):

- Tenant is repeatedly late paying rent.

The Tenant testified that she signed a document acknowledging that she had received the 1 Month Notice on April 29, 2014, and that she did not sign the paper agreeing to move out. She confirmed she did not file an Application for Dispute Resolution to dispute the Notice and argued that she thought she did not have to file an application because the Landlord filed one.

The Landlord testified that despite his warnings, the Tenant continues to pay her rent late. On one occasion in January 2014, rent was 20 days late. He provided documentary evidence to support that rent has been paid late.

The Tenant stated that on numerous occasions she has paid rent a few days late; but it was only 20 days late one time. She indicated that when she is out of the country she pays her rent late; but always pays it when she returns to the country.

The Landlord confirmed that he had collected payment for June 2014, and noted that it was not paid until the 5<sup>th</sup> of June.

### Analysis

Upon review of the 1 Month Notice to End Tenancy issued April 29, 2014, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act. The effective date of the Notice was **May 31, 2014**.

Section 47(4) of the Act stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

In this case the Tenant would have had to file their application for dispute no later than May 09, 2014. At the time the Landlords filed their application for an Order of Possession on May 12, 2014, the Tenant had not made application to dispute the 1 Month Notice.

Section 47(5) of the Act stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the

tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

As noted above this tenancy ended **May 31, 2014**, in accordance with the 1 Month Notice; however, this hearing was not scheduled to be heard until June 30, 2014. Therefore, I find the Landlords collected payment for June 2014 as use and occupancy of the unit and not rent for June 2014.

The Landlords have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

### Conclusion

The Landlords have been granted an Order of Possession effective **2 Days upon Service** to the Tenant. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlords may deduct the one time award of **\$50.00** from the Tenant's security deposit held in trust, as full compensation for recovery of their filing fee.

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 30, 2014

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Residential Tenancy Branch

