



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Manzanita Homes  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenants – CNC, FF

For the landlord – OPC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession for cause and to recover the filing fee from the tenants for the cost of this application. The tenants applied to cancel the Notice to End Tenancy for cause and to recover the filing fee paid for this application from the landlord.

The hearing went ahead as scheduled however the tenants failed to dial into the hearing during the conference call. Therefore, no hearing took place regarding the tenants' application. As the tenants have failed to present the merits of their application the tenants' application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, and two copies were posted to the door of the tenants' rental unit on June 04, 2014 at 11.00 a.m. The tenants were deemed to be served the hearing documents on the third day after they were posted pursuant to section 90(c) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified that this month to month tenancy started on September 01, 2011. Rent for this unit is \$1,591.25 per month and is due on the first day of each month.

The landlord testified that the tenants have been repeatedly late paying rent for the following months:

December, 2013 was paid on January 15, 2014;  
January, 2014 was paid on February 07, 2014;  
February, 2014 was paid on February 11, 2014;  
April, 2014 was paid on April 04, 2014  
July, 2014 remains unpaid.

The landlord testified that the tenants were served with a One Month Notice to End Tenancy for repeated late rent payments on May 24, 2014 in person. The landlord has provided a copy of the One Month Notice in documentary evidence. This Notice has an effective date of June 30, 2014. The landlord testified that the tenants continue to reside in the rental unit at this time. The landlord has provided documentary evidence showing NSF rent checks and a digital recording of a message left on the landlord's telephone from the tenant in which the tenant states they have the rent for July but will not pay it until after the Arbitration takes place.

The landlords seek an Order of Possession effective as soon as possible.

### Analysis

The landlord served the tenants with a One Month Notice to End Tenancy on May 24, 2014. The tenants did apply to cancel the Notice on June 03, 2014 the 10<sup>th</sup> day after the Notice was deemed to have been served. However, the tenants have failed to attend the hearing to present the merits of their application. Therefore I have considered the landlord's testimony and documentary evidence before me. I refer the parties to s. 26 of the *Act* which states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I refer the parties to the Residential Tenancy Policy Guidelines #38 which states, in part, that three late payments are the minimum number sufficient to justify a notice under s. 47 of the *Act*. The tenants have not appeared to demonstrate any rights under the *Act* that they had to either pay rent late or fail to pay rent on the due date. Consequently, it is my decision that the tenants are in breach of s. 26 of the *Act* and the One Month Notice to End Tenancy for cause is upheld. As the effective date of the One Month Notice has since passed, the landlord is therefore entitled to an Order of Possession effective two days after service upon the tenants.

### Conclusion

The tenants' application is dismissed in its entirety without leave to reapply. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **Two (2) days** after service upon the tenants. This Order must be served on the tenants and may be filed in the Supreme Court and enforced as an Order of that Court.

The landlord is entitled to recover the filing fee of \$50.00 pursuant to s. 72(1) of the *Act*. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$50.00**. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

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: July 24, 2014

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Residential Tenancy Branch

