



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 583230 BC LTD. &  
Royal Lepage City Centre  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and for the recovery of the filing fee. The landlords' agents participated in the conference call hearing but the tenant(s) did not. The landlords' agents presented evidence that the tenants were served with the application for dispute resolution, notice of hearing and all documentary evidence by registered mail on October 31, 2014. I found that the tenants had been properly served in accordance with the Act and the rules of procedure; with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence. The landlords' agents gave affirmed evidence.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to the recovery of the filing fee?

### Background and Evidence

The landlords' agents gave the following undisputed testimony:

The tenancy began on or about July 1, 2011. Rent in the amount of \$919.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$425.00. The landlords' agents stated that the tenants have been continually late in paying the rent. The

landlords' agent stated that the tenants have been late in paying the rent five times since January 2014. The landlords' agents stated that on July 31, 2014 they personally served the tenants the One Month Notice to End Tenancy for Cause with an effective date of August 31, 2014. The landlords' agents stated that the tenants have not moved out as of this hearing. The landlords' agents stated that the tenants have been paying the rent for which they have been given receipts that state "for use and occupancy only". The landlords' agents request an order of possession.

### Analysis

Section 47 says a landlord may end a tenancy by giving a One Month Notice to End Tenancy for Cause. In the case before the landlord has issued the notice on the grounds that the "tenant is repeatedly late in paying the rent". Residential Tenancy Policy Guideline 38 addresses the issue before me, it states:

*"Three late payments are the minimum number sufficient to justify a notice under these provisions.*

*It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late".*

The landlord provided detailed documentation to illustrate that the tenants have been late five times in the past year. I accept the landlord's undisputed testimony and I find that the tenant was served with a notice to end tenancy. The tenant did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. The One Month Notice to End Tenancy for Cause dated July 31, 2014 with an effective date of August 31, 2014 is of full effect and force. The tenancy is terminated.

Based on all of the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the

tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. As the tenants have already paid for the month of December and I do not find them to be a risk at this time, the order of possession will take effect at 1:00 p.m. on December 31, 2014.

The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain \$50.00 from the security deposit in full satisfaction of the claim.

### Conclusion

The landlord is granted an order of possession for 1:00 p.m. on December 31, 2014 and is entitled to retain \$50.00 from the security deposit.

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: December 04, 2014

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Residential Tenancy Branch

