



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MT, CNC, ERP, RP, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47;
- an order to the landlord to make repairs (or emergency repairs) to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties, both tenants and both landlords, attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenants provided one witness. The landlords made an oral application for an Order of Possession should the tenants' application prove unsuccessful.

### Preliminary Issue: Service of Documents and preliminary application by tenants

Tenant DP confirmed that the landlord handed her the 1 Month Notice on December 21, 2014. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the 1 Month Notice on that date. Tenant DP testified that she served both landlords with the dispute resolution hearing package on January 7, 2015 by two individual registered mailings. The landlords confirmed receipt of the notices and written evidence included in the tenants' original application. In accordance with section 89 and 90 of the *Act*, I find that the landlords were deemed served with the tenants' notice of hearing and dispute resolution package five days after both registered mailings.

The tenants applied for more time to make their application pursuant to section 66 of the *Act*. The tenants filed their application for dispute resolution on December 31, 2014,

within the time accorded under the *Act*. On receiving their dispute resolution package, they served that package to the tenants within the time accorded under the *Act*. The tenants withdrew their application for more time to apply in this matter.

Further evidence was submitted by the landlords on January 20, 2014 to the Residential Tenancy Branch. The tenants both testified that they had not received these materials and, on review, the materials included pictures that were not clear or useable in this matter. These materials were excluded from the hearing and not considered in this decision.

### Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to an order for repairs, or emergency repairs?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

Landlord NA testified that this tenancy began on October 1, 2013 on a month to month basis with a rental amount of \$800.00 payable on the first of each month. The tenants rented a townhouse belonging to their friends, the landlords. The amount of rent and when this rental amount is due are matters of dispute between the landlords and the tenants. The landlords continue to hold a security deposit paid by the tenants at the start of their tenancy. The amount of that security deposit is also in dispute.

On a tenants' application to cancel a notice to end tenancy, the burden shifts to the landlord to justify the end of the tenancy. The landlord applied at this hearing for an Order of Possession for late payment of rent should the tenants' application be unsuccessful.

Landlord NA testified that there has been a history of late payment of rent by the tenants. Landlord NA testified that the tenant paid rent late on the following dates:

- At least occasions 3 prior to May in 2014
- May 2014
- August 2014
- November 2014

In December 2014, the landlords issued a 1 Month Notice to End Tenancy for repeated late payment of rent.

Landlord NA also testified that Tenant DP refused to pay rent in August. After that month, the tenants "became more and more behind in their rent". The landlord testified that there is currently an amount of \$130.00 in outstanding rent and \$1,167.00 in outstanding utility payments owed by the tenants. Landlord NA testified that the utilities were not included in the rental agreement with the tenants; the tenants were expected to pay \$105.00 each month above their rental amount. Landlord NA testified that the tenants only made two payments towards utilities in February and November, totalling \$300.00.

With her testimony, Landlord NA provided a statement of account regarding this tenancy. It documents the payments of the tenants for more than a year with respect to their rent and their utilities. The statement of account indicates a payment of \$395.00 for August rent, leaving a balance of \$405.00. It indicates a payment the following month (September) to partially compensate for the outstanding balance. According to the statement, \$775.00 was paid towards the \$800.00 October rent and nothing towards the outstanding arrears. In November, a larger payment was made above the rental amount but it did not eliminate the arrears entirely. The statement of account also provided a breakdown of utilities and an indication of payments by the tenants with respect to those utilities.

To further support her statement of accounts, Landlord NA provided banking information reflecting the amounts previously provided: deposits in these amounts deposited often two to five days after the first of each month. Landlord NA testified that, while they occasionally accepted rent late from the tenants, they intended to have rent paid on the first of each month. Landlord NA testified that the tenancy agreement between the parties reflects payment on the first of the month. Landlord NA testified that she spoke with the tenants about late payment of rent on more than one occasion. She testified that she also spoke with them about paying rental arrears. She testified that the tenants were aware that the landlords required the rent on time and the outstanding rent.

Tenant DP testified that their agreement with the landlords was to pay rent to the landlords at church on the Sunday that was closest to the first of the month. She also testified that, when they paid less than the full month's rent, they were told "not to worry about it" by the landlords. She testified that the landlords said they could pay off any outstanding amounts whenever they were able. She acknowledged, in her testimony and written submission, at least 6 months where rent was "potentially" late. She also

acknowledged substantial loans from the landlords, outside of the rental agreement that are outstanding that she referred to as “forgiven” at times and at other times, she stated, “they told us there was no rush to pay them”.

Tenant DP testified that both tenants have been paying at least \$100.00 per month towards utilities each month and that it has not been recorded by the landlords. Neither tenant had further evidence to reflect these payments. Tenant DP also submitted a sheet reflecting a payment of \$375.00 from the government that she testified is paid in full each month to the landlords towards a total rental amount of \$750.00. She testified and provided documentation to support her position that she has been receiving this payment since November 1, 2013.

The tenants provided a witness to testify. She testified that she had seen the tenants provide money to the landlords at church on more than one occasion and provided further testimony that was primarily based on information provided to her by the tenants. During the course of her testimony, other people were speaking in the background. It made her testimony both unclear and somewhat controversial. Overall, the testimony from the witness provided limited information as she had limited first-hand knowledge regarding the tenancy or payments of rent.

With respect to the application by the tenants for repairs, the tenants both testified that there is mold within the rental unit and, at times, the heat has been turned off. The landlords denied these claims and no evidence was submitted to support these claims for needed repairs.

#### Analysis: Application to Cancel the Landlord's Notice to End Tenancy

Residential Tenancy Policy Guideline No. 38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

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

*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. A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision...*

There is evidence, in the testimony of both landlords, that the tenancy agreement requires the tenant to pay all of the rent by the first of each month. The evidence

presented indicates that the tenants have been late in paying their rent on at least three occasions. Although the tenants provided different reasons and explanations for why their rent could be considered late and a suggestion that there was some alternative payment arrangement, I am satisfied that there is a pattern of late payment of rent throughout this tenancy.

It is also worth noting that section 26 of the *Act* provides that 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...” The tenants’ obligation to pay rent on time is absolute, barring invoking a contravening right under the *Act*. Rent was late and not paid in full in August. There was an attempt to compensate in September but August and September were not paid in full at that time, either. Rent was late in November.

Based on the evidence provided, I find the tenants are repeatedly late paying rent, justifying the landlord’s notice to end the tenancy. I dismiss the tenants’ application to cancel the landlord’s 1 Month Notice to End Tenancy for Cause on the basis of the tenants’ repeated late payment of rent. There is no need to consider the tenants’ application for repairs as the tenancy ended January 31, 2015.

Order of Possession:

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

Given my dismissal of the tenants’ application to cancel the 1 Month Notice to End Tenancy and given that the tenants did not vacate the rental unit as of January 31, 2015, I find that the landlord is entitled to a 2 day Order of Possession pursuant to section 55(1) of the *Act*.

Given that the tenants were unsuccessful in their application, I find the tenants are not entitled to the recovery of their filing fee for this application.

**Conclusion**

The tenants withdrew their application for more time to apply in this matter.

I dismiss the tenants' application for an order with respect to repairs or emergency repairs.

I dismiss the tenants' application to cancel the notice to end tenancy and decline to order the recovery of their filing fee.

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenants. If the tenant(s) does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

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 6, 2015

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Residential Tenancy Branch

