



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TOP PRODUCERS REALITY LTD PM DIVISION  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenants – CNC, FF

For the landlord - OPC

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. 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 landlord applied for an Order of Possession for Cause.

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 landlords to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on February 10, 2016. Canada Post Tracking numbers were provided by the landlord's agent in evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords and their agents appeared, gave sworn testimony, were 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

Are the landlords entitled to an Order of Possession?

### Background and Evidence

The landlords' agent testified that this tenancy started on November 01, 2012. Rent for this unit is \$1,000.00 per month and is due on the first day of each month. The tenant is the son of the landlords and the landlords purchased this property for their son to live in as a tenant with the option of purchasing the property from the landlords after three years. The landlords testified that this is strictly a tenancy agreement with their son and his wife now also lives on the property. As part of that agreement the tenant had to comply with the terms of the agreement and maintain the property and comply with city bylaws.

The landlords testified that the tenants have not complied with city bylaws and a number of non-compliance notices have been sent to the landlords. The landlords testified that their son is in violation of the parking bylaw, and discarding materials on the property. Copies of the city bylaw notices have been provided in evidence along with photographic evidence showing the condition of the property. The landlords testified that the tenant appears to be operating a wrecking yard at the property and many vehicle parts are discarded on the property.

The landlord testified that they have given their son notice to clean up the property but he has had struggles with substance abuse and cannot help himself. The landlord testified that they want to be able to sell the property to use the proceeds to help their son. The landlord testified that their son has also changed the house address at the front of the property and taken down signs so people wanting to look at the property are unable to locate it.

The landlords served their son and his wife with a One Month Notice to End Tenancy for Cause on January 19, 2016. This Notice has an effective date of February 29, 2016. A copy of the Notice has been provided in documentary evidence and provides the following reasons to end the tenancy:

- 1) *The tenant or a person permitted on the residential property by the tenant has*
  - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
  - (iii) *Put the landlord's property at significant risk;*

*2) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*

*(i) Damaged the landlords' property*

*(iii) Jeopardized a lawful right or interest of another occupant or the landlord*

*3) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

*4) The tenant knowingly gave false information to prospective tenants or purchaser of the rental unit/site or property/park*

*5) Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.*

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

### Analysis

I have carefully considered all the evidence before me and find the landlords' management company served the tenants with a One Month Notice to End Tenancy on January 19, 2016. As this Notice was posted to the tenants' door it is deemed to have been served three days after it was posted pursuant to s. 90 of the *Act*. Therefore, the tenants had 10 days from January 22, 2016 to file their application to dispute the landlords' One Month Notice. The tenants filed their application to dispute the Notice on January 29, 2016 but have failed to attend the hearing.

I am satisfied from the evidence before me that a tenancy exists between the parties and the tenants have jeopardized the lawful right and interest of the landlords, the tenants have put the landlords' property at significant risk as the tenants have failed to comply with s. 32 of the *Act* regarding the maintenance of the property. Furthermore, despite numerous notices to comply with city bylaws the tenants have not complied and cleaned up the property. The tenants have breached a material term of the tenancy agreement to maintain the property and this has not been corrected within a reasonable time after written notice was given by the landlords to do so. Although I am unable to determine if the tenants have given false information to a prospective purchaser, the tenants have made the property difficult to sell as they have changed the address of the property and removed signs.

It is therefore my decision that the One Month Notice to End Tenancy for Cause is upheld and I allow the landlords' application for an Order of possession pursuant to s. 55 of the *Act*.

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.

The landlords have been issued an Order of Possession effective **two (2) days** after service upon the tenants pursuant to section 55(1) of the *Act*. This Order must be served on the tenants. If the tenants remain in Possession of the rental unit and do not relinquish that possession to the landlords then the Order may be filed in the Supreme Court of British Columbia and enforced 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: March 15, 2016

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Residential Tenancy Branch

