



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNR, MNSD, MNDC, FF

### Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The landlord's agent attended the hearing. Both tenants appeared. All in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants acknowledged service of the dispute resolution package, including all evidence, and the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

### Scope of Application

At the hearing the agent informed me that the landlord had received payment for the tenants' use and occupancy to 31 July 2016. The agent asked to withdraw the landlord's claim in respect of the rent arrears and rent loss. As there is no prejudice to the tenants in permitting this amendment, it is allowed.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 20 February 2016. Monthly rent in the amount of \$1,850.00 is due on the first. The landlord continues to hold the tenants' security deposit in the amount of \$925.00.

On 31 May 2016, the landlord's agent personally delivered the 1 Month Notice to the tenant JP. The 1 Month Notice was dated 31 May 2016 and set out an effective date of 30 June 2016. The 1 Month Notice set out that it was given as the tenants were repeatedly late paying rent and the tenants had breached a material term of the tenancy agreement. The tenants did not apply to cancel the 1 Month Notice.

The agent testified that the tenants paid rent late for March, April, and May. The landlord provided 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that were issues for each of these months.

The agent testified that she received \$4,000.00 on or about 14 July 2016. The landlord provided me with a receipt indicating that this payment was received on the basis of the tenants' use and occupancy only.

The tenant JP testified that the tenants have paid for their use and occupancy of the rental unit for August. The agent could not confirm this as she had not yet received the report from her office.

### Analysis

Pursuant to subsection 47(4) of the Act a tenant must dispute a notice given pursuant to section 47 of the Act within ten days from its receipt. In accordance with subsection 47(5) of the Act, where a tenant fails to apply for dispute resolution within the ten-day period, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The tenants received the 1 Month Notice on 31 May 2016. This means that the tenant had until 10 June 2016 to apply to this Branch to cancel the 1 Month Notice. The tenants did not apply to cancel the 1 Month Notice. As the tenants' did not apply to cancel the 1 Month Notice within the ten days provided for under the Act, the tenants were conclusively presumed to have accepted the tenancy ended on 30 June 2016. As this date has now passed, the landlord is entitled to an order of possession.

The evidence provided by the parties indicates that the tenants have paid for their use and occupancy of the rental unit for August. The landlord is entitled to an order of possession effective 31 August 2016.

As the landlord has been successful in this application, it is entitled to recover the filing fee paid from the tenant. If this amount remains unpaid at the end of the tenancy, the landlord may deduct this amount from any security deposit held pursuant to paragraph 72(2)(b) of the Act.

### Conclusion

The landlord is provided with a formal copy of an order of possession effective 31 August 2016. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$100.00. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 subsection 9.1(1) of the Act.

Dated: August 04, 2016

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Residential Tenancy Branch

