



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, FF

### Introduction

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

- an Order of Possession for cause, pursuant to section 55;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants, "tenant JP" and "tenant NN," did not attend this hearing, which lasted approximately 22 minutes. The landlord ZH ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he had authority to represent the other landlord named in this application, his wife landlord CH, as an agent at this hearing.

The landlord confirmed that tenant NN was personally served with two copies of the landlords' application for dispute resolution hearing package ("Application") on August 21, 2015. The landlord provided a letter, dated August 21, 2015, signed by tenant NN, acknowledging receipt of the landlords' Application. In accordance with section 89 of the *Act*, I find that both tenants were served with the landlords' Application on August 21, 2015.

The landlord confirmed that tenant JP was personally served with a 1 Month Notice to End Tenancy for Cause, dated August 6, 2015 ("1 Month Notice"), on the same date. The landlord provided a proof of service form signed by a witness, AL, and by tenant JP. In accordance with section 88 of the *Act*, I find that both tenants were served with the 1 Month Notice on August 6, 2015.

### Issues to be Decided

Are the landlords entitled to an Order of Possession for cause?

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

### Background and Evidence

The landlord testified that this tenancy began on June 1, 2013 with tenant JP, for a fixed term of one year, after which it transitioned to a month-to-month tenancy. Tenant NN signed an amendment to the tenancy agreement, indicating that she was being added as a tenant to the original tenancy agreement signed by tenant JP, as of December 20, 2014. The landlords provided copies of the tenancy agreement and the amendment to the tenancy agreement.

The landlord stated that monthly rent in the amount of \$980.00 is payable on the last day of each month. The landlord stated that the amendment to the tenancy agreement raised the rent by \$20.00 each month, as agreed by tenant NN, as per the original tenancy agreement terms. A security deposit of \$480.00 was paid by tenant JP and the landlords continue to retain this deposit.

The landlords provided a copy of the 1 Month Notice, which indicates an effective move-out date of September 30, 2015. The landlords cited the following reasons for the issuance of the notice to the tenants:

- *Tenant is repeatedly late paying rent;*
- *Tenant or a person permitted on the property by the tenant has:*
  - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
  - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord testified that the tenants have paid rent late more than three times during this tenancy. The landlords provided copies of emails and letters between the parties regarding late rent, copies of bank statements, emails and a rent ledger showing late rent payments from June 2014 to August 2015. The landlord stated that the tenants have now paid all their rent in full, to date. The landlord stated that he accepted rent payments from the tenants after serving the 1 Month Notice, but they were accepted for "use and occupancy only." The landlords provided a letter, dated August 6, 2015,

stating that the tenants' final rent payment due on August 31, 2015, would be accepted for "use and occupancy only."

The landlord also stated that the tenants played loud music in their rental unit, which significantly interfered with and unreasonably disturbed other occupants, seriously jeopardized the health, safety and lawful right of other occupants and breached a material term of the tenancy agreement outlining no loud noises or parties. The landlord provided copies of letters sent to the tenants as well as a timeline of events regarding this loud music. The landlord testified that other occupants complained of the tenants playing loud music and that the landlord heard the music himself and it was loud and disruptive.

### Analysis

While I have turned my mind to the documentary evidence submitted by the landlords, as the tenants submitted no evidence, and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

Section 55(3) of the *Act* states that an Arbitrator may grant an order of possession before or after the date when the tenant is required to vacate a rental unit. Therefore, in this instance, the landlords are permitted to apply for an order of possession prior to the effective date on the 1 Month Notice of September 30, 2015.

Residential Tenancy Policy Guideline 38 states that "three late payments are the minimum number sufficient to justify a notice..." I accept the landlord's undisputed evidence that the tenants paid rent late more than three times during this tenancy. The landlords provided written documentation to support their contention that the tenants paid rent late. I find that the landlords' 1 Month Notice was issued for a valid reason. As I have found that one of the grounds on the 1 Month Notice to be valid, I do not need to consider the other grounds indicated on the notice.

Section 55(2)(b) of the *Act* states that a landlord can request an order of possession when a notice to end tenancy has been given, the tenant has not disputed the notice and the time for disputing the notice has expired. Section 47(6) indicates that the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the 1 Month Notice and must vacate the rental unit by that date if they have not disputed the notice. The tenants have not disputed the 1 Month Notice and the landlords filed their application on August 19, 2015, after the 10 day period for

disputing the notice expired on August 16, 2015. Therefore, the tenants are conclusively presumed to have accepted that the tenancy ends on September 30, 2015.

Accordingly, I find that this tenancy ends on the effective date indicated on the 1 Month Notice, September 30, 2015. In this case, this requires the tenants and anyone on the premises to vacate the premises by September 30, 2015. I find that the landlords are entitled to an Order of Possession effective at 1:00 p.m. on September 30, 2015.

The landlords filed their Application prior to the effective date of the 1 Month Notice of September 30, 2015, and this hearing was held on September 28, 2015. The landlords did not provide sufficient evidence to show that the tenants would not vacate the rental unit by September 30, 2015. The landlord stated that the tenants are still residing in the rental unit but they recently asked the landlord for references to find a new place to live. The landlords applied to ensure that the tenants would leave by September 30, 2015, as the landlord indicated the rental unit is already rented to new tenants for October 1, 2015. Therefore, I find that the landlords are not entitled to recover the \$50.00 filing fee from the tenants. I find that the landlords must bear the cost of their own filing fee.

### Conclusion

I grant an Order of Possession to the landlords effective **at 1:00 p.m. on September 30, 2015**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords' application to recover the \$50.00 filing fee is dismissed without leave to reapply.

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: September 29, 2015

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Residential Tenancy Branch

