



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Jaswal Brothers  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC RP RR FF O

### Introduction

This hearing convened pursuant to the tenant's application. The landlord and the tenant called in to the teleconference hearing.

The tenant originally applied for an order for repairs and an order for a reduction in rent; however, after the tenant was served with a notice to end tenancy for cause, she submitted evidence indicating that she also sought to cancel the notice. I amended the application to allow the tenant to dispute the notice.

I informed the parties that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the tenant's application in the conclusion of my decision.

### Issue(s) to be Decided

Is the notice to end tenancy for cause valid?  
If so, is the landlord entitled to an order of possession?

### Background and Evidence

On September 11, 2015 the landlord served the tenant with a notice to end tenancy for cause. The notice indicated that the reasons for ending the tenancy were that the tenant was repeatedly late paying rent, and the tenant breached a material term of the tenancy agreement.

The landlord stated that the tenant has been late paying rent, which is due in advance on the first day of each month, every month this year and last year. The landlord requested an order of possession pursuant to the notice to end tenancy.

The tenant confirmed that she has paid rent late since the beginning of the tenancy. The tenant stated that she normally paid rent on the seventh day of each month. The tenant also stated that the landlord previously served her with a notice to end tenancy for repeated late payment of rent, but they did not enforce it.

### Analysis

I find that the notice to end tenancy for cause is valid, on the ground of repeated late payment of rent. The date that rent is due is a material term of a tenancy agreement, and it cannot be altered without written consent of both parties. Therefore, although the landlord regularly accepted the tenant's late rent, the term of the tenancy agreement requiring rent to be paid on the first of each month was not altered by the tenant's habit to pay late. It is not relevant that the landlord previously served a notice to end tenancy for repeated late payment of rent and chose not to enforce it. The tenant's application to cancel the notice to end tenancy is therefore dismissed.

In the hearing the landlord orally requested an order of possession. When a tenant's application to cancel a notice to end tenancy is dismissed, and the landlord orally requests an order of possession in the hearing, I must grant the order of possession. The corrected effective date of the notice is October 31, 2015, and the tenancy therefore ended on that date. The tenant has not paid rent for November 2015. I therefore find it appropriate for the order of possession to be valid two days after service on the tenant.

Because I found the notice valid on the ground of repeated late payment of rent, it was not necessary for me to consider the second cause of material breach.

As the tenant's application was not successful, she is not entitled to recovery of the filing fee for the cost of her application.

### Conclusion

The tenant's application to cancel the notice to end tenancy is dismissed. As the tenancy ended on October 31, 2015, I also dismiss the tenant's application for repairs and a reduction in rent.

I grant the landlord an order of possession effective two days after service. 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.

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: November 2, 2015

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Residential Tenancy Branch