



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KJ Ford Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Tenant: CNC DRI FFT MNDCT OLC  
Landlord: OPC FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 5, 2018.

The Landlord and the Tenant both attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”), a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is ending due to late payment of rent and whether or not the Landlord is entitled to an order of possession. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant’s application with the exception of the following ground:

- to cancel a 1 Month Notice to End Tenancy for cause (the “Notice”).

I will also consider the following ground applied for by the Landlord as it is clearly related to the issue at hand:

- an order of possession based on a 1 Month Notice to End Tenancy for cause.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord’s Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?
- Who is entitled to recover the filing fee for their application?

#### Background and Evidence

The Landlord issued the Notice because the Tenant is repeatedly late paying rent. The Landlord testified that he served the Notice to the Tenant on October 12, 2017, and the Tenant acknowledged receipt of the Notice on that day. The Landlord provided a copy of the tenancy agreement into evidence which shows that rent is due on the first of the month and that they hold a security deposit in the amount of \$290.00.

The Landlord testified that since he took over management of the building in 2013, the Tenant has been late paying rent many times, and in the last 8 months, he has been late twice. The Landlord provided a printout of the Tenant’s rent payments, and the dates he was paid. This list shows that the Tenant pays by email money transfer. The Tenant has paid rent on or before the first of the month most times. However, the printout shows late payments as follows:

Rent paid by Tenant on:

- September 4, 2017
- June 3, 2017
- August 3, 2016
- December 4, 2015
- September 4, 2015
- April 2, 2015
- December 5, 2014
- July 4, 2014
- January 3, 2014

The Tenant stated that the Landlord has improperly increased his rent over the years and he has never been given a proper Notice of Rent Increase. The Tenant stated that he pays rent late “once in a while” but that it is never later than the 5<sup>th</sup> of the month. The Tenant stated that most times he pays rent early. He also stated that he is paid by his work on the 5<sup>th</sup> and the 20<sup>th</sup> of the month in varying amounts and so once in a while he will have to wait until around the 5<sup>th</sup> to make his rent payment. The Tenant stated that if the 5<sup>th</sup> falls on a weekend, for example on a Saturday, he will get paid on the 4<sup>th</sup>. In any event, he stated that he is never more than a couple of days late.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The Landlord entered into written evidence a copy of his October 12, 2017, Notice. In that Notice, the Landlord cited the following reasons for the issuance of the Notice:

*Tenant is repeatedly late paying rent.*

As per the tenancy agreement provided into evidence, it is clear that rent is due on the first of the month. Further, it is clear the Tenant has been late paying rent multiple times. I turn to the following:

#### *Residential Tenancy Policy Guideline #38 – Repeated Late Payment of Rent*

*The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that 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.

*It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.*

I acknowledge that some of the late rent payments date back several years. However, based on the evidence before me, I find there is at least 9 times where rent has been paid late, including two times within the last year. As such, I find the Landlord has sufficient cause to issue the Notice. The Tenant’s application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession, based on the corrected effective date of the Notice, November 30, 2017. Given that the effective date has passed, I find the Landlord is entitled to an order of possession effective **two days after service** on the Tenant.

As the Landlord was successful with his application, I grant him the recovery of the filing fee against the Tenant, pursuant to section 72 of the *Act*. I authorize the landlord to retain \$100.00 from the Tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee.

#### Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **2 days** after service on the Tenant. This order must be served on the tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I authorize the Landlord to retain \$100.00 from the Tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee.

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: January 05, 2018

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Residential Tenancy Branch