



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PETCO PROPERTIES  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes

CNC MT PSF

### Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the 1 Month Notice pursuant to section 47; and
- an order to the landlord to provide services or facilities pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by their advocate. The corporate landlord was represented by its agents.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issues to be Decided

Should the tenant be granted additional time to file their application to dispute the 1 Month Notice to End Tenancy for Cause (the "1 Month Notice")?

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to provide services or facilities?

### Background and Evidence

The parties agree on the following facts. Monthly rent for this tenancy is \$851.00 payable on the first of each month.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated November 18, 2019 by posting on the rental unit door on that same date. The reasons provided on the notice for the tenancy to end are:

*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;*
- *put the landlord's property at significant risk*

The landlord gave evidence that the tenant was late paying rent in July, August and September, 2019. The landlord submitted into documentary evidence a tenant ledger showing that the tenant paid \$200.00 on July 19, 2019, \$851.00 on August 7, 2019, \$425.00 on September 5, 2019, \$292.00 on September 9, 2019 and a payment of \$1,000.00 on September 30, 2019.

The tenant confirmed that they paid rent late on those dates but provided explanations of the circumstances that led to the late payments. The tenant submits that the relationship with the landlord has been antagonistic and that they have had mobility issues in traveling to arrange payments.

### Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In the present case the tenant is deemed to have been served with the 1 Month Notice dated November 19, 2019 on November 22, 2019, three days after posting on the rental unit door in accordance with sections 88 and 90 of the *Act*. The tenant filed their application for dispute resolution on November 27, 2019, within the ten days provided under the *Act*.

While the tenant has applied for additional time to file their application, I find that this is not necessary as the tenant filed their application within the statutory deadlines.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

In the matter at hand the landlord submits that the tenant has been repeatedly late paying rent. Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy. I accept the parties' evidence that the tenant has been late paying rent in July, August and September of 2019. The tenant confirmed that they did not pay rent by the first on those months and instead made partial payments after the date rent was due.

While the tenant provided some excuses as to why they were unable to pay, section 26(1) of the Act provides that a tenant must pay rent when it is due whether or not the landlord complies with the Act, regulations or tenancy agreement. I find the tenant's submissions as to the reasons for late payment to be irrelevant and does not give rise to a right to not pay rent in accordance with the tenancy agreement.

Based on the evidence of both parties, I find that the tenants have been repeatedly late paying rent. Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenant's application.

Section 55(1) of the Act reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the Act as it is in the approved form and clearly identifies the parties, the address of the

rental unit and the effective date of the notice. The notice provides the reasons for ending the tenancy, the repeated late payment of rent.

As I have dismissed the tenant's application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the notice has passed, I issue an Order effective 2 days after service on the tenant.

As the balance of the tenant's application pertains to relief concerning an ongoing tenancy, I dismiss the application.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant(s)**. Should the tenants or any occupant 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 tenant's application 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: January 14, 2020

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Residential Tenancy Branch