



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence by posting it to the rental unit door on September 15, 2020. Both parties also confirmed the landlord served the tenants in person with the submitted documentary evidence. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, the tenants' application for requiring the landlord to comply was clarified. The tenants provided written details which states:

*I would also like to have the water damage fixed in living room which was from the bathtub which was fixed. Weatherstripping Seals in windows Previous damage from previous tenancy.*

[reproduced as written]

The tenant with the assistance of her advocate clarified that this request for in fact for repairs to the rental unit and were unrelated to the landlord's notice.

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that the tenant has applied for an order cancelling the 1 month notice to end tenancy for cause and for an order for the landlord to comply with the Act. The tenants clarified that the request was in fact for repairs as a result of water damage and weather stripping seals on the windows. As these sections of the tenant’s application are unrelated to the main section which is to cancel the notice to end tenancy issued for cause, I dismiss this section of the tenants’ claim with leave to reapply.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

### Background and Evidence

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

Both parties confirmed that on September 1, 2020, the landlord served the tenant with the 1 Month Notice dated August 31, 2020 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of September 30, 2020 and that it was being given as:

- the tenant is repeatedly late paying rent.

The tenants provided written details which states:

*I have four children. So it is hard finding a bigger place. I pay rent each month and I do not owe for more than one month.*

[reproduced as written]

The landlord provided affirmed testimony that the tenant has been repeatedly late paying rent for a 13 month period:

August 2019

September 2019

October 2019

November 2019  
December 2019  
January 2020  
February 2020  
March 2020  
April 2020  
May 2020  
June 2020  
August 2020  
September 2020

The landlord clarified that due to the current order under the Emergency Program Act that he is only relying on the first 7 months of the tenant being repeatedly late paying rent for the period August 2019 to February 2020.

The tenants dispute the landlord's claim that she was late paying rent for October 2019. The tenant stated that rent was paid on October 1, 2020 in full.

The tenants argue that the landlord was always informed and was "ok" with accepting rent late. The tenants argued that at no time has the tenant been given any warning letters. The tenant's advocate also argued that the landlord has not been significantly affected by the late payments of rent.

The landlord argued that the tenant was served with a 10 Day Notice for Unpaid Rent on November 1, 2019 and stated that the signed tenancy agreement provides for the rent to be paid by the 1<sup>st</sup> day of each month.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, both parties confirmed that the landlord served the tenant with a 1 month notice dated August 31, 2020 with the reason selected as "Repeatedly late payments of rent".

The landlord provided affirmed testimony that the tenant was repeatedly late paying rent for the period August 2019 through to February 2020. The tenant disputed that she was not late paying rent for October 2019 and that rent was paid in full. The tenant also

argued that at no time has the landlord issued a warning that repeated late payments or rent were an issue. The landlord argued that the signed tenancy agreement provides for rent to be paid on the 1<sup>st</sup> day of each month and that the tenant was issued a 10 Day Notice for Unpaid Rent on November 1, 2019.

Residential Tenancy Branch Policy Guideline #38, Repeated Late Payment of Rent states in part,

*The Residential Tenancy Act<sup>1</sup> and the Manufactured Home Park Tenancy Act<sup>2</sup> 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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late*

*A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.*

*In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.*

*Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.*

[reproduced as written]

I accept the landlord's undisputed affirmed evidence that the tenant has been repeatedly late paying rent for the period August 2019 through to February 2020 with the exception of the tenant's dispute of October 2019. This is in essence a total of 6 months in which the tenant has been repeatedly late paying rent. As noted above, Residential Tenancy Branch Policy Guideline #38 requires only a minimum of 3 late payments to justify a notice under these provisions. On this basis, I find that the landlord has justified their reason for cause on the 1 month notice dated August 31, 2020.

The tenant's application to cancel the 1 month notice dated August 31, 2020 is dismissed. Pursuant to section 55 of the Act, the landlord is granted an order of possession to be effective 2 days after it is served upon the tenant as the effective end of tenancy date has now passed.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with this 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: October 30, 2020

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Residential Tenancy Branch