



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, OLC, FFT

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- 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; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issue – 10 Day Notice to End Tenancy for Unpaid Rent or Utilities

As part of the tenant's application, she has filed to dispute a notice for unpaid rent. However, both parties confirmed that there is no unpaid rent at this time and that the only "active" notice is the One Month Notice to End Tenancy for Cause, accordingly; I dismiss the portion of the tenant's application without leave to reapply regarding the 10 Day Notice.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled? If not, should the landlord be granted an order of possession?

Should an order be given compelling the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The landlord gave the following testimony. The tenancy began on September 15, 2015. Monthly rent is set at \$850.00, payable in advance on the first of each month. The landlord served the tenant with a One Month Notice to End Tenancy for Cause on September 14, 2020. The landlord's 1 Month Notice cited the following reason for seeking an end to this tenancy for cause.

*Tenant is repeatedly late paying rent.*

The landlord testified that the tenant was late in paying the rent for September 2019, October 2019, November 2019 and September 2020. The landlord testified that he never gave the tenant permission to pay late. The landlord testified that he also sent warning letters to the tenant in June 2019 and October 2019. The landlord testified that the tenant has not changed her behaviour and continues to be late with her rent. The landlord testified that she finally paid the rent on time for October and November 2020 only after issuing a notice to end the tenancy.

The tenant testified that she had the landlords verbal permission to pay late. The tenant testified that two of the four late payments were due to her simply forgetting the date. The tenant testified that one of the late payments was as a result of car repairs that she needed to do so that she could work and make money. The tenant doesn't think the tenancy should end because of late payments.

Analysis

***Landlord's notice: cause***

***47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:***

*(b) the tenant is repeatedly late paying rent;...*

In this case, the landlord has submitted undisputed evidence that the tenant paid rent late on three successive occasions from September 2019 through November 2019 and again for September 2020.

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby 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...*

*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...*

There is clear evidence that the written tenancy agreement requires the tenant to pay all the rent by the first of each month. The evidence presented indicates that the tenant has been late in paying their rent on at least three occasions. Section 26(1) of the *Act* requires rent to be paid when it is due. I do not accept the tenant's claim that she “forgets” to pay the rent. The parties signed a contract and that the tenant's behaviour has not changed despite two written warnings, four occasions of late payment and a notice to end tenancy for unpaid rent.

For these reasons, I am satisfied that there is a recurring pattern of late payment of rent during this tenancy and that the landlord had adequate grounds to issue the 1 Month Notice for the tenant's late payment of rent.

Section 55 of the *Act* reads in part 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 to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the landlord's 1 Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. I dismiss the tenant's application to cancel the 1 Month Notice and issue the landlord an Order of Possession in accordance with section 55(1) of the *Act*.

### Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

I grant an Order of Possession to the landlord. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 20, 2020

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Residential Tenancy Branch