



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding J&W ENTERPRISES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties confirmed that they had exchanged their documentary evidence.

### Issue(s) to Decide

Is the tenant entitled to have the one month notice to end tenancy for cause set aside?

If not, is the landlord entitled to an order of possession?

Is the tenant entitled to the recovery of the filing fee from the landlord for this application?

### Background and Evidence

The landlord gave the following testimony. DC testified that the tenant moved in on July 1, 2004 and her current rent is \$572.00 due on the first of each month. DC testified the tenant has paid her rent repeatedly late. DC testified that the tenant has been late in paying the rent for May 2018, August 2018, November 2018 and December 2018. DC testified that the tenants have a designated location to deliver the rent cheques on site. DC testified that the company policy is that they have an employee attend on the 2<sup>nd</sup> of each month to collect the rent. DC testified that if the rent is not there on the 2<sup>nd</sup>, a 10

Day Notice to End Tenancy for Unpaid Rent or Utilities is issued. ES testified that she has specific instruction to pick up rent on the 2<sup>nd</sup> of each month and that the subject tenant has been late in paying the rent four times since May 2018. The landlord issued a One Month Notice to End Tenancy for Cause on December 12, 2018 for the following reason:

*Tenant is repeatedly late paying rent.*

DC testified that he felt the matter was very black and white and requests an order of possession.

The tenant gave the following testimony. The tenant testified that she always pays her rent on time. The tenant testified that she believes “something fishy is going on and that someone is lying”. The tenant testified that she is willing to provide post-dated cheques from this point forward to avoid any further issues.

#### Analysis

Section 47 of the *Act* provides that a landlord must provide sufficient evidence to support the issuance of the notice. The landlord issued the notice on the following ground:

#### ***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 evidence that the tenant paid rent late on four occasions from May 2018 through December 2018.

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. 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.*

Both parties agreed that the tenant is to pay all of 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 four occasions.

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 to cancel the 1 Month Notice. 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: February 04, 2019

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Residential Tenancy Branch