



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: CNC, LRE, FF

## Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause, for an order suspending or placing restrictions on the Landlord's right to enter the rental unit and to recover the filing fee for this proceeding.

## Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Is it necessary to place restrictions on the Landlord's right to enter the rental unit?

## Background and Evidence

This month-to-month tenancy started in September, 2005. Rent is \$809.90 per month payable on the 1<sup>st</sup> day of each month. The Landlord claimed that throughout the tenancy the Tenant provided him with rent cheques postdated for the 1<sup>st</sup> day of each month. The Landlord claimed that once he listed the property for sale in July, 2008, however, the Tenant would no longer give him postdated cheques but instead gave him one or two each month.

The Landlord claimed that the Tenant gave him a rent cheque for October dated October 2, 2008 without advising him or getting his consent. The Tenant admitted this was the case but said she knew funds would not be in her account on the 1<sup>st</sup> and wanted to ensure the cheque was not returned for non-sufficient funds.

The Landlord said the Tenant then mailed her rent cheque for November and he did not receive it until November 3, 2008. The Landlord said the Tenant also mailed her rent cheque for December and he did not receive it until December 2, 2008. The Tenant claimed that it was her practice for a number of years to mail her rent cheques to the Landlord approximately one week (or the Wednesday) prior to the 1<sup>st</sup> day of the following month. The Tenant could not account for why the Landlord received her November and December rent cheques late and said the Landlord did not advise her they were late until she received his documents in support of the Notice.

The Landlord argued that there were no problems with late rent payments from the Tenant until the rental property was listed for sale. The Landlord claimed it was only after this occurred that the Tenant refused to send more than one cheque at a time and that they were received or dated later than the 1<sup>st</sup> of the month. The Landlord said the Tenant also made her February rent cheque payable on February 5, 2009 without his consent. The Tenant argued that she did not want to send too many cheques to the Landlord in the event the property sold and they would then be made out to the wrong payee. The Tenant also argued that the only reason she made the cheques out for a date later than the 1<sup>st</sup> was due to an injury and death in the family.

### Analysis

RTB Policy Guideline #38 – Repeated Late Payment of Rent states that three late payments are the minimum number sufficient to justify a notice to end tenancy under s. 47(1)(b) of the Act. There is no dispute that the Tenant paid her rent late for October, 2008 without the consent of the Landlord and I find it was a late payment.

With respect to the late payments alleged for November and December, 2008, I accept the Landlord's evidence that he received them on November 3, 2008 and December 2, 2008 respectively. I also accept the Tenant's undisputed evidence that the Landlord did not bring these late payments to her attention until after she was served with the Notice to End Tenancy.

I find that the Landlord accepted delivery of the rent cheques by regular mail for approximately 4 years and also find there is no evidence to contradict the Tenant that she mailed her November and December, 2008 rent cheques approximately 7 days in advance of the due date (eg. such as an envelope showing the posted date). Section 90 of the Act deems a document that was mailed to have been received by the recipient 5 days later. Consequently, I find that the Tenant mailed the rent cheques to the Landlord within a reasonable time (given they live in the same community), and that the delay in the Landlord receiving them was likely for reasons beyond the Tenant's control. In particular, it is reasonable to conclude that there was a delay in the regular mail service which could not have been foreseen by the Tenant.

As the Notice to End Tenancy was served on the Tenant on January 31, 2009 and rent for February, 2009 was not due until February 1, 2009, I find that the Landlord cannot rely on this late payment in support of the Notice. In summary, I find that there is only one late payment of rent (October, 2008) that the Landlord can rely on for issuing his Notice dated January 31, 2009. As a result, I find there is insufficient evidence of "repeated" late payments and therefore no grounds for the Notice to End Tenancy for Cause.

### Conclusion

The One Month Notice to End Tenancy for Cause dated January 31, 2009 is cancelled and the tenancy will continue. The Tenant's application to recover the filing fee is dismissed and her application for an order restricting the Landlord from entering the rental unit is dismissed with leave to re-apply.