



# Dispute Resolution Services

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

## Decision

Dispute Codes: CNC FF

## Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause. Both the tenant and the landlord participated in the teleconference hearing.

## Issue(s) to be Decided

Is the notice to end tenancy valid?

## Background and Evidence

The tenancy began on September 1, 2008, with monthly rent payable on the first of each month. On April 11, 2009 the landlord served the tenant with a notice to end tenancy for cause. The notice cited “repeated late payment of rent” as the cause for ending the tenancy.

The landlord’s evidence was that the tenant was late paying rent on three occasions: September 5, 2008; December 3, 2008 and April 5, 2009. The landlord verbally requested an order of possession if I find that the notice to end tenancy is valid.

The tenant’s response was that he acknowledged the late payments in December 2008 and April 2009, but he disputes the late payment for September 2008. The tenant’s evidence was that he paid the rent by cheque on September 1, 2008, but later discovered through his employer that a banking error had occurred. The tenant notified the landlord of the error on September 4, 2008 and paid the full rent on September 5, 2008.

### Analysis

The Residential Tenancy Policy Guidelines state that three late payments are the minimum number of late payments that meet the definition of “repeated late payments” and justify cause to end a tenancy. The guidelines also state that in exceptional circumstances, such as where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered in determining whether a tenant was repeatedly late paying rent.

In this case, I accept the tenant’s evidence that he intended and attempted to pay the rent on time on September 1, 2008, but an unforeseeable bank error resulted in his late payment of rent on that occasion. I therefore find that the September 2008 payment cannot be included as a late payment of rent, and the tenant has therefore not made late payment three times. I therefore find the notice to end tenancy is not valid.

### Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

As the tenant was successful in his application, he is entitled to recovery of the \$50 filing fee, which he may deduct from next month’s rent.

Dated May 28, 2009.