



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes            CNC, MNDC

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with request to have a section 47 Notice to End Tenancy cancelled, and I dismiss the remaining monetary claim, with liberty to re-apply.

### Background and Evidence

On July 5, 2010 the landlord served the tenant with a one month Notice to End Tenancy for clause with the following the reasons checked off:

- Tenant is repeatedly late paying rent.
- Tenant or person permitted on the property by the tenant has:

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- Significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Seriously jeopardize the health or safety or lawful right of another occupant or the landlord.
- The tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment security safety or physical well-being of another occupant or the landlord.

I started with the first issue of repeatedly late paying rent:

The landlord testified that:

- Rent has now been late every month since the beginning of the tenancy.
- May 2010 rent of \$160.00 was supposed to have been paid by June 1, 2010, however it was not paid until July 11, 2010.
- June 2010 rent was supposed to be paid on June 1, 2010 however it was not paid until June 2, 2010.
- July 2010 rent was supposed to be paid on July 1, 2010 however he reluctantly agreed to accept it on July 4, 2010 however it was not paid in full until July 11, 2010. \$1000.00 was paid on July 6, 2010, and the remaining \$200.00 was paid along with the \$160.00 may rent on July 11, 2010.
- August 2010 rent was paid by cheque, however the cheque was not honoured by the bank and the money was not replaced until August 9, 2010.

Therefore since the rent has been late for every month of this tenancy the landlord feels he is justified in ending the tenancy for repeated late rent payments.

The tenant testified that:

- The Notice to End Tenancy that was served on him did not have the first box (tenant is repeatedly late paying rent) checked off.

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- The landlord had agreed to accept \$160.00 of May 2010 rent at a later date, and it was not stated that it needed to be paid by June 1, 2010.
- June 2010 rent was paid on June 1, 2010.
- Because he was having some financial difficulties due to an auto accident, the landlord agreed to accept the July rent by July 15, 2010.
- The August 2010 rent cheque did not clear due to a bank error, and it was replaced on August 8, 2010.

The tenant therefore believes that since his copy did not have the repeated late rent payment box checked off, and since the landlord had agreed to the late payments, the tenancy should not be ended for tenant repeatedly late paying rent.

### Analysis

The tenant claims that on his Notice to End Tenancy the landlord did not check off the box that states “tenant is repeatedly late paying the rent”, however the tenant has supplied no evidence in support of this claim, and the copy supplied by the landlord clearly shows that that box has been checked off.

Is my decision therefore that I accept that the box which states that the tenant is repeatedly late paying rent was checked off on the Notice to End Tenancy.

It is all so my finding that the tenant has been repeatedly late paying the rent. Rent is due on the first of the month, and the tenant has not paid the rent on the first of the month ever.

I accept that the landlord agreed to accept \$160.00 of May rent on June 1, 2010, however it was not paid on June 1, 2010 and in fact was not paid until July 11, 2010.

The tenant claims at June rent was paid on June 1, 2010 however the receipt issued clearly shows that the rent was paid on June 2, 2010.

The tenant claims that the landlord agreed to accept July 2010 rent by July 15, 2010, a claim that the landlord denies stating that he only agreed to allow until July 4, 2010. Rent is due on



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the first of each month and in the absence of any proof that the landlord agreed to accept it on the 15th of the month, I must accept the landlords claim that he had only agreed to July 4, 2010. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

Both sides agreed that the rent for August 2010 was not paid until August 8, 2010, and although the tenant claims it was due to a bank error, the Residential Tenancy Act does not look at why rent was late, only if rent was late, and in this case it was clearly late.

Therefore it is my decision that the landlords do have sufficient grounds for ending the tenancy for repeatedly late rent payments and I will not set the notice aside.

Having upheld this notice for repeated late rent payments, I need not make any finding on the other reasons given on the Notice to End Tenancy.

## Conclusion

The request to have the Notice to End Tenancy cancelled is dismissed without leave to reapply, and I have issued an Order of Possession to the landlord for 1 p.m. on September the 15th 2010. The filing fee for this application had been previously waived, however since this application is been dismissed, I order that the applicant repay the \$50.00 filing fee to the Director of the Residential Tenancy Branch.

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: August 30, 2010.

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Dispute Resolution Officer