



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      CNC, OLC, ERP, RP, RR, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to make emergency repairs and repairs; and to reduce rent for the repairs agreed upon but not provided.

The hearing was conducted via teleconference and was attended by the tenant and an occupant of the unit; two agents for the landlord and the landlord. Both parties each had one additional witness available, but neither of these witnesses was called during the proceeding.

During the hearing the landlord's agent verbally requested an order of possession.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to an order to have the landlord comply with the *Act*, regulation or tenancy agreement; to make emergency repairs and repairs; to reduce the rent for repairs agreed upon but not provided and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 33, 47, 55, 67, and 72 of the *Act*.

If the tenant is unsuccessful in her application it must be decided if the landlord is entitled to an order of possession pursuant to Section 55 of the *Act*.

### Background and Evidence

The tenancy began on November 1, 2005 as a fixed term tenancy that converted to a month to month tenancy on November 1, 2006 for a current monthly rent of \$1,300.00 due on the 1<sup>st</sup> of the month and a security deposit of \$650.00 was paid on September 28, 2005.

The tenant submitted a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on December 7, 2010 with an effective date of January 31, 2011 citing the tenant is repeatedly late paying rent and has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord provided copies of tenant ledgers and 6 - 10 day Notices for Unpaid Rent that had been issued to the tenant since October 6, 2009. The landlord cited the following late payments in his testimony:

Month	10 Day Notice Issue Date	Rent Paid Date
October 2009	October 6, 2009	October 17, 2009
November 2009	November 6, 2009	December 1, 2009 <sup>1</sup>
March 2010	March 5, 2010	March 10, 2010
September 2010	September 4, 2010	September 4, 2010
October 2010	October 5, 2010	October 13, 2010
December 2010	December 2, 2010	December 6, 2010

The tenant's acknowledged these late payments and testified that the late payment for March 2010 resulted from the occupant's lack of work at the time and the late payment for October was because they were withholding rent to have the landlord make repairs.

The tenant testified that she tried to pay the September rent to the building manager on September 1, 2010 but that the landlord refused to take cash and the tenant could not get to a bank prior to September 4, 2010 after which she made the payment.

The landlord's agent testified the general policy is that all rent is to be paid by cheque or money order but that on occasion, and in particular if rent is late they have accepted cash. The agent further noted that the rent for this unit had always been paid by cheque until the tenant's partner moved into the rental unit.

The landlord's agent also testified that the tenant did not attempt to pay rent on September 1, 2010 and she has no recollection of advising the tenant that cash was "no longer" an acceptable payment method.

As to the reason that December 2010 rent was late the tenant testified that the stairs to the landlord's office are too unsafe and that she could not navigate the stairs with her children and baby and had to wait until her partner returned home from working out of town. The tenant provided no explanation as to why they did not mail the rent to the landlord.

The tenant provided no explanation regarding the late rental payments for the months of October 6, 2009 or November 6, 2009.

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<sup>1</sup> Landlord was granted an order of possession based on this notice but negotiated with the tenant to continue the tenancy.

In relation to the tenant request for emergency repairs the tenant indicated all of the external access stairs and railings throughout the residential property are not compliant with local building codes and in fact the landlord's agent herself recently broke her leg by falling off these stairs. The landlord did not confirm or deny how the agent's leg was broken.

The tenant noted that in the landlord's evidence was submitted a copy of a letter from the local city Senior Building Official dated December 15, 2010 that replacement of unit entry stairs had been completed without a building permit and order the landlord to apply for a permit within 14 days.

The landlord testified that he has since been in contact with the city and due to the Christmas season the person he needed to speak to had been away until January 4, 2011 so he left a message for that person but has not yet heard back from them.

## Analysis

Section 47 of the *Act* stipulates a landlord may end a tenancy by issuing a notice to end the tenancy if, among other things, the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions.

I accept the tenant's testimony stipulating that on at least two occasions (March and October 2010) they were wrongly late in the payment of rent. I also accept, in the absence of any explanation from the tenant, the tenants were late without explanation on two other occasions (October 2009 and November 2009).

And while I may understand the tenant's reluctance to use the stairs to the landlord's office I find there were alternate methods available to the tenant to ensure she provided the landlord with rent when it was due, such as using Canada Post to mail the payment.

As such, I find the landlord has established sufficient grounds to end the tenancy based on the repeated late payment of rent. As a result, I find the tenancy will end in accordance with the 1 Month Notice to End Tenancy for Cause issued on December 7, 2010 and the matters relating to having the landlord comply with the Act, regulation or tenancy agreement; ordering repairs to the rental unit or property; and reducing the rent for repairs agreed to but not provided as no longer necessary to adjudicate. I dismiss these matters.

On the matter of emergency repairs, I order the landlord to obtain the necessary permits and approvals required by the local city Senior Building Official to ensure the rent unit entry stairs are compliant with local building codes within the next 30 days.



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## Conclusion

I find that the landlord is entitled to an Order of Possession effective **January 31, 2011 after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: January 06, 2011.

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Residential Tenancy Branch