



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RP, MNDC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated August 24, 2011. The Tenant also applied for an Order that the Landlord make repairs, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

RTB Rule of Procedure 2.3 states that “if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” I find that the Tenant’s claims on his application for repairs and compensation are unrelated to his claim seeking to cancel a Notice to End Tenancy for Cause which only alleges the sole ground that “the Tenant is repeatedly late paying rent.”

The Tenant’s advocate argued that the Tenant’s claims for repairs and compensation were related to his application to cancel a Notice to End Tenancy because the Landlord allegedly served the Tenant with the One Month Notice when the Tenant complained about the need for repairs. In other words, the Tenant’s advocate argued that the Landlord had an ulterior motive for serving the One Month Notice. However, the issue of bad faith or having an ulterior motive for issuing a Notice to End Tenancy is only relevant when determining the enforceability of a 2 Month Notice to End Tenancy for Landlord’s Use of Property which is discussed in detail in RTB Policy Guideline #2. Consequently, I Order that the Tenant’s claims for relief for repairs and compensation are hereby severed from his application in this matter and he is granted leave to reapply for that relief. The Tenant’s written submissions also allege a claim for a rent reduction, however, I find that this relief was not sought by the Tenant on his application and therefore he will also have to reapply for that relief.

The Tenant also argued that the Dispute Resolution Officer was biased because she severed his application for compensation and repairs. RTB Policy Guideline #10 at p. 1 states as follows:

“A reasonable apprehension of bias exists when an arbitrator is satisfied that a person who is informed of all the facts would reasonably conclude that there is an appearance of bias on the part of the arbitrator. A reasonable apprehension of bias may exist where the arbitrator has a personal or financial interest in the case which he or she is to hear..... The fact that one or both of the parties may

have appeared before the arbitrator previously, or that the arbitrator previously denied an application by one of the parties, does not by itself support a claim of bias.”

As the Tenant’s sole reason for alleging bias is based on the Dispute Resolution Officer’s decision to sever the Tenant’s repair and compensation claim from the hearing of his application to cancel a Notice to End Tenancy pursuant to RTB Rule of Procedure 2.3, I find that there is no reasonable apprehension of bias.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This month-to-month tenancy started on October 25, 2010. Rent is \$2,350.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant is entitled to a rent reduction of \$350.00 per month “for the cost of gardening.” The rental unit is a house on a large property which also has a cottage (occupied by someone else) and an outbuilding where the Landlords keep chickens.

On August 25, 2011, the Landlords posted a One Month Notice to End Tenancy for Cause dated August 24, 2011 on the rental unit door. The sole ground alleged on the Notice was that “the Tenant is repeatedly late paying rent.” The Parties agree that the Landlord, V.C., came to the property every day or other day to feed her chickens. Consequently, the Parties had an informal arrangement whereby V.C. would pick up a rent cheque from the Tenant or instruct him to leave a cheque for her in the mail box of the cottage. V.C. claimed that on a couple of occasions, the Tenant left his rent cheque in the cottage mail box and at his front door although she had not told him to do so.

The Landlord, V.C., said it was her practice to call the Tenant prior to the 1<sup>st</sup> day of each month to see if he had a rent cheque for her. V.C. said on a number of occasions, the Tenant gave her a rent cheque later in the month that was dated for the 1<sup>st</sup> of that month. V.C. also claimed that the Tenant gave her cheques that were dated later than the 1<sup>st</sup> of the month without her consent namely, February 4, 2011, May 4, 2011 and August 3, 2011.

The Tenant claimed that it was his practice to write out a rent cheque for the Landlord when she came to pick up the rent. The Tenant said it was V.C.’s practice to come by almost daily and she frequently had coffee with him. The Tenant said the Landlord’s attendance at the property became less frequent when he started asking her to make repairs. Accordingly, the Tenant claimed his cheques for February 4, 2011 and May 4,

2011 would have been written on the date that V.C. came to collect the rent. The Tenant admitted that this was not the case with his rent cheque for August 2011. The Tenant said he changed financial institutions at this time and had not received new cheques by the 1<sup>st</sup> of that month. The Tenant said he was waiting for cheques and V.C. was not available so that he could give her cash. Consequently, the Tenant said he sent V.C. an e-mail advising her that he would be late with his rent because he was waiting for cheques and she did not say anything about it.

The Tenant's advocate claimed that the parties established a practice for paying rent in a manner or manners (and at times) that were convenient for the Landlords. Consequently, the Tenant's advocate argued that it would be unfair to allow the Landlords to strictly rely on the Act to evict the Tenant for his late payments.

### Analysis

RTB Policy Guideline #38 states (in part) as follows:

"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.

A Landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent."

Under the terms of the Parties' tenancy agreement, rent is due in advance "*on or before the 1<sup>st</sup> first calendar day of each month unless the parties agree in writing in advance to a different date.*" The Landlord, V.C., claimed that the Tenant made 3 late rent payments by way of cheques dated February 4, 2011, May 4, 2011 and August 3, 2011. V.C. also claimed that she did not give the Tenant permission to make these late payments. In support of her position, V.C. claimed that it was her practice to telephone the Tenant each month to see if he had a rent cheque available for her for the 1<sup>st</sup> of the month and if he did she would either pick it up that day when she was at the rental property or if he would not be home she instructed him to leave it in the mail box of the cabin on the rental property. Consequently, the Landlord, V.C., argued that she never gave the Tenant permission to pay late. The Tenant argued that the Parties had an informal arrangement for the payment of rent whereby the Landlord, V.C., would pick up the Tenant's rent payments when it was convenient for her. The Tenant claimed that he filled his cheques on the date V.C. came to pick up the rent.

I find that the Parties had an informal payment arrangement whereby the Landlord, V.C., would pick up the Tenant's rent cheque at the rental property each month rather than require the Tenant deliver them to her on or before the 1<sup>st</sup> day of each month. In the absence of any corroborating evidence from the Landlords that they attended the rental property on the 1<sup>st</sup> day of each month to pick up the Tenant's rent, I find on a balance of probabilities that the Landlord, V.C., was not at the rental property on the 1<sup>st</sup> day of each month. Consequently, I conclude that the Tenant likely dated his rent cheques on February 4, 2011 and May 4, 2011 because those were the dates the Landlord, V.C., came to the rental property to pick up the rent. Given that the Tenant relied on this arrangement which was agreeable to the Landlords, I find that it would now be unfair to allow the Landlords to treat these payments as late for the purposes of ending the tenancy under s. 47(1)(b) of the Act. As a result, I find that the Landlords waived reliance on the Act with respect to these 2 late rent payments only.

However, I find that the Tenant's payment made on August 3, 2011 is different. The Tenant admitted that this payment was late because he was waiting for cheques from his new financial institution. I do not give a lot of weight to the Tenant's argument that he did not want to leave cash for the Landlords and had no other way to pay the rent on the 1<sup>st</sup> of that month because there were other secure ways the Tenant could have made his August 2011 rent payment such as by bank draft or money order. The Tenant also argued that he believed the Landlords condoned this late payment because they did not ask for payment in a different way (than by cheque) for that month. However, I find that there is little merit to this argument because (s. 26 of the Act) places the onus on the Tenant to pay rent when it is due, not when it is convenient for the Tenant. I find that there is no evidence that the Landlords were not available to collect the rent on August 1, 2011. Furthermore, I find the fact that the Landlords gave the Tenant the One Month Notice to End Tenancy for Cause 3 weeks after he made this payment some evidence that the Landlords did not condone the Tenant's late payment for August 2011.

Consequently, I find that the Landlords have shown that the Tenant made 3 late rent payments however I find that the Landlords waived reliance on s. 47(1)(b) of the Act with respect to 2 of those late payments (February 4 and May 4, 2011). As a result I find that the Landlords have not established that there were grounds to end the tenancy and therefore the One Month Notice to End Tenancy for Cause dated August 24, 2011 and is cancelled.

As a further matter, I find that the Parties' current informal arrangement for the payment of rent has led to a number of difficulties in determining if the Tenant is making his rent payments when they are due under the tenancy agreement. I also find that the Parties' once amicable relationship has now soured with the result that they have significantly less contact and therefore their previous arrangement is no longer workable. Consequently, ***effective immediately, I Order that the Tenant pursuant to s. 62(3) to comply with the Act and the tenancy agreement by delivering his rent payments to the Landlords on or before the 1<sup>st</sup> calendar day of each month (whether by***

***post-dated cheque or other method) unless the parties agree in writing to a different date or method.***

As the Tenant has been successful on this part of his application, he is entitled pursuant to s. 72(1) of the Act to recover from the Landlords the \$50.00 filing fee he paid for this proceeding and I order pursuant to s. 72(2) of the Act that he may deduct that amount from his next rent payment when it is due and payable to the Landlords.

### Conclusion

The Tenant's application to cancel a One Month Notice to End Tenancy for Cause dated August 24, 2011 is granted. The Tenant's application for repairs and compensation is dismissed with leave to reapply. 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: October 03, 2011.

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Residential Tenancy Branch