



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNC, FF

### Introduction

Some documentary 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.

### Issue(s) to be Decided

This is an application for an order to cancel a Notice to End Tenancy that was given for cause and a request for recovery of the \$50 filing fee.

### Background and Evidence

The landlord testified that:

- Rent has been late every single month since the beginning of the tenancy.
- On May 3, 2011 the tenant informed her he had put a stop payment on the cheque, and the tenant did not offer to pay the May rent until much later in May.
- The May 2011 rent and the June 2011 rent were both finally paid on June 22, 2011 after a dispute resolution hearing.
- July 2011 rent was paid on July 7, 2011.
- August 2011 rent was paid on August 10, 2011.
- September 2011 rent was paid on September 10, 2011.
- October 2011 rent was paid on October 9, 2011.
- I was unable to use the post dated cheques that the tenant had given me for the rent because my name had been spelled incorrectly and the tenants refuse to replace the cheques stating they would pay in cash.

The tenant testified that:

- The May and June 2011 rent were part of a previous dispute resolution hearing, and that rent was paid in full on June 22, 2011 pursuant to the decision from the Dispute Resolution Officer.
- We were not willing to replace the previous post dated cheques that had the incorrect spelling because the landlord refused to return the originals, and therefore we inform the landlord we would pay in cash.
- Every time we attempt to pay the rent to the landlord in cash the landlord avoids us and that is why the rent has been late on all the other dates.

In response to the tenant's testimony the landlord testified that:

- The tenants never offered to replace the cheques that had the incorrect spelling; they just stated they would pay cash from now on.
- I have never avoided the tenants rent payments, I need the rent money and so certainly would not avoid receiving it if it was offered.
- The tenants have never left a message on my voicemail stating they have the rent available or attempted to make arrangements to pay it.
- The dates that I have received the rent in the months of July 2011 through October 2011 are the dates that it was first offered each month.

### Analysis

I will not consider the months of May 2011 and June 2011 in today's decision because those were the subject of a previous dispute resolution hearing.

I therefore will only look at the rents for the months of July through October 2011 and it is my finding that the landlord has shown that the rent was late on all four of those months.

The tenant claims of the rent was late because the landlord avoided them when they attempted to pay the rent in cash; however I find it very hard to believe that the landlord would avoid receiving her rent.

Further if the tenants were having difficulty locating the landlord to pay the rent I fail to see why it could not have been sent by registered mail since the tenants had the landlords mailing address.

Therefore since the rent had been late at least three times at the time of the Notice to End Tenancy was given I am not willing to cancel the Notice to End Tenancy.

### Conclusion

The tenants application is dismissed in full without leave to reapply, and have issued an Order of Possession to the landlord for 1 p.m. on October 31, 2011.

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 25, 2011.

---

Residential Tenancy Branch