



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a One Month Notice to End Tenancy for Cause and a request for the filing fee to be reimbursed.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

During the Hearing the Landlord requested an order of possession, if the Tenants were not successful in their Application.

### Issue(s) to be Decided

Should the One Month Notice to End Tenancy be cancelled?

### Background and Evidence

The parties submitted a written tenancy agreement signed by the parties into evidence. The written tenancy agreement states that the tenancy commenced on February 15, 2010, the rent is \$1350.00 per month, the rent is due on the first of each month, and the tenancy is on a month to month basis. The tenancy agreement between the parties states that there is a 10% late charge if rent is late after the first day of the month. It also states that the tenant must pay the rent on time and if the rent is late the landlord may issue a notice to end tenancy to the tenant. The tenancy agreement also states that any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. The parties confirmed at the hearing that they had exchanged copies of the documents submitted into evidence in advance of the hearing.

The parties agree that the Landlord personally served the One Month Notice to End Tenancy for Cause on the Tenants on October 26, 2011. The Notice states that the Tenants are given notice to move out November 30, 2011, due to repeated late payment of rent.

The Tenants testified that since BT was laid off his job they have had difficulty paying the rent on the first of the month, and that they have been paying the rent bi-monthly to

the Landlord. The Tenants state that the Landlord verbally agreed to this arrangement early on in the tenancy, and they referenced that the Landlord stated a late rent charge in the tenancy agreement which they signed. The Tenants acknowledge that they have issued NSF cheques, but that they rectified those issues with cash payments of rent.

The Tenants state that the Landlord issued a Ten Day Notice to End Tenancy dated September 13, 2011. The Tenants stated that they settled the outstanding rent arrears and provided the Landlord cash for any cheques that had not cleared and the Landlord withdrew the Ten Day Notice to End Tenancy. The Tenants also stated that due to a dispute with the Landlord regarding whether the June 2011 rent was paid in full or not the Tenants did issue a cheque to the Landlord but then changed their mind and put a stop payment on the cheque. The Tenants acknowledge that recently they received some new cheques from the bank with the wrong transit number on them so on October 13, 2011 they obtained a letter from their bank to explain this to the Landlord for some recent cheques that were affected.

The Tenants stated that the Landlord issued a One Month Notice to End Tenancy for Cause to them on October 26, 2011, however their position is that this should be cancelled as the Landlord had a verbal agreement with them that allowed them to pay the rent bi-monthly rather than on the first of the month as set out in the tenancy agreement. The Tenants state that they are not ready to move out of the rental unit at this time and may not be ready until the spring. The Tenants state that they would like to settle the issue with the Landlord so that they can stay on in the rental unit. The Tenants stated that the One Month Notice to End Tenancy should be cancelled because the Landlord verbally allowed them to pay rent late on a bimonthly basis.

The Landlord testified that the rent is due on the first of each month and he does not have an agreement with the Tenants to change the rent payments to bi-monthly. The Landlord stated that when he found out that Tenant BT had been laid off his job, he allowed the Tenants to be late for a couple of months earlier in the tenancy, as he thought they would resolve this within that time. The Landlord states that that the Tenants have been late with the rent many times and they have not paid rent when it is due on the first of the month, and they have not it paid bimonthly. The Landlord stated that when the Tenants issued him NSF cheques he would have to try to contact them and ask them to pay cash. The Landlord submitted evidence with copies to the Tenants, of the numerous NSF cheques which the Tenants have issued to him. The Landlord stated that the Tenants paid him rent after he issued the Ten Day Notice to End Tenancy in September, and that he did tell them that he withdrew that Notice.

The Landlord stated because late payments have happened so many times, that he finally decided to issue the One Month Notice to End Tenancy for Cause for repeated late payment of rent. The Landlord explained that he is at the point where he is even contemplating selling the rental house once the Tenants vacate. The Landlord stated that he is not willing to settle with the Tenants at this time, he wants the Tenants to vacate the rental unit, and he wants to receive an order of possession.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants were personally served with the One Month Notice to End Tenancy for Cause on October 26, 2011, in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

The Tenants applied for Dispute Resolution within ten days of receiving the Notice, as required by the Act.

The Tenants confirm that they have been repeatedly late with rent payments. The Landlord's position is that he will not tolerate this any longer. The tenancy agreement which the parties signed at the outset of the tenancy states very clearly that "any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable." As the parties are not in agreement as to what sort of verbal agreement they did or did not have, I must rely on the tenancy agreement they signed at the outset of the tenancy.

I reject the Tenants' argument that putting a late fee clause in a tenancy agreement indicates that a Landlord will be endlessly tolerant of late rent payment or allowing bi-monthly rent payments to occur indefinitely. Tenancy agreements under the Act and Residential Tenancy Regulation, the "Regulation", are specifically allowed to include a clause regarding late fees, although the Act and Regulation limit the amount of late fee a Landlord can charge. Section 7 of the Regulation limits the NSF or late fee to the amount charged by the financial institution or \$25.00.

I do not accept the Tenants' argument that they had a verbal agreement with the Landlord to pay rent on a bi-monthly basis, for the reason that the Tenants' frequent lateness in paying rent has resulted in them paying rent on a variety of different dates with no set bi-monthly pattern. The NSF cheques submitted into evidence and the receipts the Landlord issued to the Tenants for rent payments by cash, demonstrate that there were no bi-monthly rent payments occurring, but rather payments whenever the Tenants paid cash or had to rectify the NSF cheques they had issued to the Landlord.

The evidence supports that Tenants made repeated late payments of rent, which is a breach of the tenancy agreement and section 26 (1) of the Act which states:

**Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the aforementioned reasons I am dismissing the Tenants Application. As a result the tenancy will end effective 1:00 P.M. November 30, 2011, as stated on the Notice, which is more than 30 days after the deemed served date of the Notice.

As the Tenants' Application is dismissed and the Landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

I find that the Landlord is entitled to an order of possession effective 1:00 P.M. on November 30, 2011.

Conclusion

I dismiss the Tenants' Application.

The Landlord is granted an order of possession effective **November 30, 2011 at 1:00 P.M.**, and this order may be filed in the Supreme Court and enforced as an order of that court.

This order must be served on the Tenants and may be filed in the Supreme 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: November 25, 2011.

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Residential Tenancy Branch