



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for an order to the Landlord to cancel a One Month Notice to End Tenancy for Cause and a request for compensation for damages and losses.

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.

The parties confirmed at the hearing that they had exchanged copies of the documents submitted into evidence in advance of the hearing.

### Preliminary Matter(s)

The Tenant stated at the hearing that she wanted to withdraw her application for compensation for damages and losses. As a result, I dismiss the Tenant's claim for damages and losses.

### Issue(s) to be Decided

Should the One Month Notice to End Tenancy be cancelled?

### Background and Evidence

The parties agree that the tenancy commenced on November 01, 2011, and that the rent is \$1,000.00 per month. The parties agree that the rent is due on the first of each month, and the tenancy is on a month to month basis. The parties agree that the Tenant paid the Landlord a \$500.00 security deposit prior to the Tenant moving in. The parties agree that the Tenant rents a basement suite from the Landlord. The parties agree that only the Tenant "RR" is on the tenancy agreement. The parties did not submit a copy of the tenancy agreement into evidence.

The parties read the One Month Notice to End Tenancy for Cause into evidence during the hearing as neither party had provided a copy prior to our office to the hearing. The parties agree that the Landlord personally served the One Month Notice to End Tenancy for Cause on the Tenant on February 28, 2012. The parties agree that the

Notice states that the Tenant is given notice to move out for March 31, 2012. The parties agree that the Landlord stated the following reasons on page two of the Notice:

- Tenant is repeatedly late paying rent (November 07, 2011, January 13, 2012, February 03, 2012)
- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Tenant stated that the Landlord issued a One Month Notice to End Tenancy for Cause to her on February 28, 2012 in person. The Tenant requests that this Notice be cancelled as she does not feel the Landlord has cause to end the tenancy.

The Landlord stated that the tenancy agreement is that rent is due on first of each month, and that she has a mortgage and other payments due and requires the rent to be paid on time and that she is not willing to have the tenancy continue any longer. The Landlord stated that when the tenancy commenced the Ministry of Social Development contacted her to determine whether the Tenant was renting there. The Landlord stated that the Ministry of Social Development advised her that they send the Tenant the rent portion each month one week before the end of the month. The Landlord stated that the Tenant paid rent late as follows: November 07, 2011, January 03, 2012, and February 03, 2012. The Landlord provided copies of the rent receipts into evidence for the late rent payments. The Landlord stated she issued the the One Month Notice to End Tenancy for Cause for several reasons, but the first reason indicated on page two was for repeated late payment of rent. The Landlord stated the other reasons for issuing the Notice were due to the Tenant's guest "L" staying over frequently and neighbour complaints about "L", concerns about "L" interacting with the Landlord's children rather than dealing with the Landlord directly, "L" parking in front of the house and not in the guest parking area, the Tenant allowing smoking in the rental unit and a dog in the rental unit in contravention of the tenancy agreement. The Landlord stated that she could not locate a copy of the tenancy agreement to submit into evidence but stated that the ad for the rental unit which the Tenant responded to had stated that no pets and no smoking was allowed at the rental unit. The Landlord has not filed an application for dispute resolution at this time.

The Tenant stated that she is not ready to move out of the rental unit at this time but is looking for a place to move to in future. The Tenant stated that the Landlord did not say anything when the rent was paid late and accepted the late rent payments for November, January, and February. The Tenant stated that the Ministry of Social Development was mailing the cheques directly to her and she in turn would pay the Landlord the rent. The Tenant agreed that she was late on three occasions, but blamed the Ministry of Social Development for not sending the cheques to her sooner. The Tenant stated that she has not requested her cheques to go directly to the Landlord at

this time, but stated she is aware that she could have done so. The Tenant stated that she has received no formal warnings or written warning from the Landlord about late payment of rent or about her guest "L", who she states is the father of her son. The Tenant stated there have been no police calls and no incidents or noise after hours at the rental unit. The Tenant stated that she is a good Tenant and that she paid her rent on time for March 01, 2012. The Tenant stated that the dog belonged to "L" and only had to stay with her in the rental unit for a short two week period in February 2012 as "L" had to go out of town to get vehicle parts. The Tenant stated that after the Landlord asked "L" to park his vehicle in the guest parking rather than in front of the house, he has done so. The Tenant stated that she and her guests do not smoke in the rental unit and that the Landlord has also requested they smoke off the property and that they are complying with the Landlord's request. The Tenant requests that Notice to End Tenancy issued February 28, 2012 be cancelled.

### Analysis

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

I find that the Tenant was personally served with the One Month Notice to End Tenancy for Cause on February 28, 2012, in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

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

I find that it was not necessary for me to consider the other issues listed on the Notice to End Tenancy due to the repeated non-payment of rent. The parties agree that the rent is due on the first of each month. I do not find that the parties amended the tenancy agreement. The Tenant confirmed that she had been repeatedly late on three occasions with rent payments. The Landlord's position is that the Tenant's late payment of rent on three consecutive occasions constitutes cause to end the tenancy.

The evidence supports that Tenant 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.

Residential Tenancy Policy Guideline (the "Policy") section 38 states that three late payments are sufficient to justify a Notice to end tenancy. Section 38 of the Policy states:

**38. Repeated Late Payment of Rent**

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

Based on the aforementioned reasons I am dismissing the Tenant's Application. As a result the tenancy will end effective 1:00 P.M. March 31, 2012, as stated on the Notice, which is more than 30 days after the deemed served date of the Notice.

The Landlord did not request an order of possession at the hearing; as a result the Landlord is at liberty to file an Application for an order of possession.

Conclusion

I dismiss the Tenant's Application.

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: March 30, 2012.

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Residential Tenancy Branch