



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, CNR, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"), a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee for the application.

The parties appeared, were affirmed into the hearing and were given the opportunity to ask questions about the hearing process.

Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

**Preliminary Issue-**The tenant initially filed an application seeking cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent; subsequent to filing her application, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. Thereafter, the tenant amended her application, seeking cancellation of that 1 Month Notice. I allowed the amendment.

The landlord stated that she was withdrawing the 10 Day Notice, as this was an improper Notice to serve upon the tenant.

Therefore the hearing proceeded on the tenant's request to cancel the 1 Month Notice.

### Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled and to recover the filing fee?

### Background and Evidence

This month to month tenancy began on September 1, 2011, monthly rent is \$1400.00 and the tenant paid a security deposit of \$650.00 on or about August 12, 2012.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated June 5, 2012 and listed an effective end of tenancy on July 31, 2012.

The causes as stated on the Notice alleged that the tenant is repeatedly late in paying rent and has sublet the rental unit without the landlord's permission.

The landlord acknowledged that she submitted no evidence in support of her Notice.

The landlord testified that one of the original tenants vacated the rental unit and that the remaining tenant has allowed another occupant into the rental unit, without the landlord's permission.

As to the repeated late payments, the landlord submitted that the tenant withheld the payment for March, some of the rent payment in April, and paid late in May.

In response, the tenant admitted that she mistakenly believed she could withhold some rent in March due to not being provided heat in the rental unit.

Additionally, the tenant contended that she had all the rent owing on May 1; however the tenant stated she was paying in cash and the landlord was out of town. Further, the tenant stated that she could not contact the landlord and had not been informed of an agent or contact name.

The tenant stated that she is now paid in full through June, showing proof of payment.

The landlord confirmed that she was out of town, but that the tenant had an email contact. The landlord also confirmed that she has not provided the tenant with an agent's or contact name to the tenant while the landlord is out of the country.

Additionally, the landlord contended that the tenant should have left her payments by sliding them under the landlord's door, as she had someone attend her home to look for the payment.

### Analysis

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

Once the tenant made a timely application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenant is repeatedly late in paying rent or has sublet or assigned the rental unit without the landlord's permission.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to prove the causes listed on the Notice.

A sublease conveys part of the tenant's rights to a third party. For example, the sublease may be for a rental period that is shorter than the original period. The sub-tenant receives only the rights contained in the sublease. The original tenant remains the tenant of the original landlord.

If a tenant agrees to sublet for the full period of the original tenancy, the agreement will be treated as an assignment of the tenancy.

In this case, the landlord has presented no evidence that the tenant has conveyed a part of her rights to a third party. In other words, the landlord failed to prove that the tenant has sublet her rental unit and the landlord therefore has not met her burden of proof regarding this cause.

As to repeated late payments, I accept the tenant's evidence that she attempted to pay rent on May 1, but had no one to which deliver the payment.

As I informed the landlord in the hearing, leaving the tenant with an email contact is not sufficient compliance with the Act. In other words, the landlord has not supplied the tenant with emergency contact information for the extended periods of time when the landlord is not in the country, or an agent's name and contact information in order to deal with the issues of the tenancy in the landlord's absence.

I therefore find that the landlord has not met her burden of proof to establish that the tenant was repeatedly late in paying rent.

Conclusion

Due to the above, I therefore find that the landlord has submitted insufficient proof to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, issued June 5, 2012, for an effective move out date of July 31, 2012, is not valid and not supported by the evidence, and therefore has no force and effect. **I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

I find the tenant is entitled to recover the filing fee of \$50.00. I direct the tenant to satisfy this monetary award by deducting the amount of \$50.00 from her next or a future month's rent payment.

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: June 21, 2012.

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Residential Tenancy Branch