



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, CNL, MNDC, and FF

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; to set aside a Notice to End Tenancy for Landlord's Use of Property; for a monetary Order and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. As the Tenant has not been served with a Notice to End Tenancy for Landlord's Use of Property I decline to consider her application to set aside a Notice to End Tenancy for Landlord's Use of Property.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant submitted documents and photographs to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were not served to the Tenant. As these documents were not served to the Tenant they were not accepted as evidence for these proceedings.

### Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside, whether the Tenant is entitled to compensation for overpaid utilities; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 15, 2010; that the rent of \$800.00 is due on the second day of each month; and that the Agent for the Landlord generally picks up the rent from the Tenant at the rental unit.

The Agent for the Landlord stated that a One Month Notice to End Tenancy for Cause was sent to the Tenant, via registered mail, on May 07, 2012 and that she understands it was mailed out to the Tenant by Canada Post on May 08, 2012. The Tenant acknowledged receiving the Notice to End Tenancy For Cause in the mail.

The Landlord and the Tenant agree that the One Month Notice to End Tenancy For Cause declared that the Tenant must vacate the rental unit by June 07, 2012. The reasons stated for the Notice to End Tenancy were that the Tenant is repeatedly late paying rent; that the Tenant has caused extraordinary damage to the rental unit or property; and that the Tenant has not done required repairs of damage to the unit/site.

The Landlord and the Tenant agree that the Tenant has not yet paid rent for June of 2012 as the Agent for the Landlord has not yet made arrangements to pick up the rent from the Tenant.

The Agent for the Landlord stated that the Tenant paid \$500.00 in rent on April 02, 2012 and \$300.00 in rent sometime later in April, at which time she also paid a \$40.00 late fee. She stated that she cannot locate the receipt for the \$300.00 payment; that she believes the payment was made during the latter part of April; and that she is certain that it was made after April 02, 2012. The Agent for the Landlord stated that she was unable to submit copies of the receipts she has in her possession, as her copies of the receipts are carbon copies and cannot be seen on a photocopy.

The Tenant initially stated that she believes she paid her rent, in full, on April 02, 2012. She subsequently referred to her rent receipts and stated that she paid \$500.00 in rent on April 02, 2012 and \$340.00 on April 21, 2012, \$40.00 of which was applied to a late fee.

The Agent for the Landlord stated that the Tenant paid \$400.00 in rent on March 02, 2012 and \$400.00 in rent on March 05, 2012. She stated that she based this testimony on rent receipts she has in her possession. The Tenant stated that she cannot locate her rent receipt for March of 2012 but she "thinks" she paid her rent, in full, on March 02, 2012.

The Agent for the Landlord stated that the Tenant paid \$500.00 in rent on February 02, 2012 and \$300.00 in rent on February 06, 2012. She stated that she based this testimony on rent receipts she has in her possession. The Tenant stated that she cannot locate her rent receipt for February of 2012 but she is sure paid her rent, in full, on February 02, 2012.

The Agent for the Landlord stated that the Tenant paid \$500.00 in rent on July 02, 2011; \$300.00 in rent on July 05, 2011; \$650.00 in rent on July 21, 2011; and \$550.00 in rent on July 22, 2011. She stated that \$800.00 of these payments were applied to rent owing for July, \$300.00 was applied to rent for August of 2011; and the remaining amount was applied to outstanding rent from June of 2011. She stated that the Tenant paid \$200.00 in rent for August on August 02, 2011 and that she paid \$300.00, which

was the remainder of her rent for August, on August 03, 2011.

The Tenant stated that that she recalls making a variety of payments in July and August but she believes this was in July and August of 2010. She stated that she thinks she paid \$500.00 on July 27, 2010, part of which was for outstanding rent for July; that she paid \$200.00 on August 02, 2010; and that she paid \$300.00 on August 03, 2010.

The Agent for the Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenant has not cleaned dog feces from the yard. The Tenant stated that she has cleaned up some of the feces but she has never been directed to clean the feces.

The Landlord stated that the Landlord wishes to end the tenancy, in part, because the Tenant is preventing a real estate agent from entering the rental unit. The Landlord presented no evidence to show that the Tenant was provided with written notice of the Landlord's intent to access the unit in accordance with section 29 of the *Act*.

The Landlord and the Tenant agree that the Tenant was required to pay gas charges related to the tenancy and that the Tenant's husband established an account with the local gas company for this purpose. The Tenant stated that she believes she has been overcharged for gas during this tenancy.

### Analysis

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that the Landlord mailed the One Month Notice to End Tenancy to the Tenant on May 07, 2012. Section 90 of the *Act* stipulates that a document that is mailed door is deemed to be received on the fifth day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on May 12, 2012.

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant is deemed to have received this Notice on May 12, 2012 and rent is due on the second day of each month, the earliest effective date of the Notice is July 01, 2012.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was July 01, 2012.

Section 47 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons. A landlord only needs to establish that it has grounds to end a tenancy for one of the reasons outlined by section 47 of the *Act*. Section 47(1)(b) of the *Act* stipulates that a landlord may end a tenancy if the tenant is repeatedly late paying rent.

Residential Tenancy Policy Guidelines suggest that three late payments are the minimum number of late payments to justify ending a tenancy pursuant to section 47(1)(b) and I find this policy to be reasonable.

On the basis of the undisputed evidence, I find that the Tenant was obligated to pay rent of \$800.00 by the second day of each month.

On the basis of the undisputed evidence, I find that the Tenant did not pay rent, in full, when it was due on April 02, 2012.

I find that the Tenant did not pay her rent, in full, when it was due on March 02, 2012 or when it was due on February 02, 2012. In reaching this conclusion I favoured the testimony of the Agent for the Landlord, who stated that rent for March was not paid in full until March 05, 2012 and that rent for February was not paid in full until February 06, 2012, over the Tenant's testimony that her rent was paid, in full, on the second day of March of 2012 and on the second day of February of 2012.

I favoured the testimony of the Agent for the Landlord over the testimony of the Tenant, in part, in regards to the rent payments from February and March of 2012, because the Agent for the Landlord stated that she was basing her testimony on rent receipts for these months that she had in her possession. Conversely, the Tenant stated that she could not locate her rent receipts for those months and she was simply relying on her memory of those payment dates. As the Agent for the Landlord's memory was being refreshed by documents, I find her testimony more reliable.

I favoured the testimony of the Agent for the Landlord over the testimony of the Tenant, in part, in regards to the rent payments from February and March of 2012, because when she was giving evidence in regards to the April payments the Agent for the Landlord readily acknowledged that she did not know precisely when the Tenant paid the \$300.00 in rent that was paid after April 02, 2012, as she could not locate the receipt for this payment. This response causes me to believe that the Agent for the Landlord is disinclined to make a statement that she is not certain is true.

Conversely, the Tenant initially stated that she believed she paid her rent, in full, on April 02, 2012 but, after referring to her rent receipts, she realized she had only paid \$500.00 in rent on April 02, 2012 and \$300.00 on April 21, 2012. This causes me to believe that the Tenant's memory is not highly reliable.

I find that the Tenant did not pay her rent, in full, when it was due on July 02, 2011. I favour the Agent for the Landlord's testimony that the rent was paid late in July of 2011 over the Tenant's testimony that it was paid late in July of 2010. In reaching this conclusion I was heavily influenced by the Agent for the Landlord's testimony that the Tenant paid a total of \$2,000.00 in July of 2011, \$300.00 of which was applied to future rent for August; \$800.00 of which was applied to rent for July; and \$900.00 of which were applied to outstanding rent from previous months. As the Tenant has only been

living in the rental unit for 2 weeks prior to July 01, 2010, I find it impossible that her rent could have been in arrears by \$900.00 by July 01, 2010. I find it far more likely that the Tenant's rent was in arrears by \$900.00 in the summer of 2011.

I find that the Tenant did not pay her rent, in full, when it was due on August 02, 2011. For all of the aforementioned reasons, I favour the Agent for the Landlord's testimony that the rent was paid late in August of 2011 over the Tenant's testimony that it was paid late in August of 2010.

As the Landlord has established that the Tenant has been late paying rent on at least five occasions, I find that the Landlord has grounds to end this tenancy pursuant to section 47(1)(b) of the *Act*.

As I have determined that the Landlord has grounds to end the tenancy pursuant to section 47(1)(b) of the *Act*, I find that I do not need to determine whether the Landlord has additional grounds to end this tenancy pursuant to section 47 of the *Act*.

As the Tenant's husband entered into an agreement with the local gas company for gas used during the tenancy and the Tenant did not pay the Landlord directly for gas, I find that the Landlord is not obligated to compensate the Tenant for any excess gas charges. Gas overcharges are a dispute between the Tenant and the local gas company that cannot be resolved in these proceedings. I therefore dismiss the Tenant's claim for compensation for gas overcharges.

### Conclusion

As I have determined that the Landlord has satisfied the legislative requirements to end a tenancy for cause, I am dismissing the Tenant's application to set aside the One Month Notice to End Tenancy and I will grant the Landlord an Order of Possession, as requested at the hearing, that will be effective on July 01, 2012.

I find that the Tenant's Application for Dispute Resolution has been without merit and I therefore dismiss her application to recover the fee for filing the 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: June 13, 2012.

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Residential Tenancy Branch