



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated July 20, 2012.

At the beginning of the hearing, the Tenant admitted that she served the Landlord in person the day of the hearing with her evidence package. The Landlord's agents did not object to the late evidence and I find that it does not prejudice the Landlord as most of it is irrelevant to the issues in this matter and the balance could have been made by oral submission in any event. Consequently, the Tenant's evidence package was admitted into evidence.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This month-to-month tenancy started on October 1, 2008. Rent is \$1,000.00 per month payable in advance on the 1<sup>st</sup> day of each month. On July 22, 2012, an agent for the Landlord served the Tenant in person with a One Month Notice to End Tenancy for Cause dated July 20, 2012. The sole ground of the Notice was that the Tenant was "*repeatedly late paying rent.*"

The Landlord's agents said the Tenant had an erratic payment history for the first 18 months of her tenancy and as a result, on April 29, 2010, the Landlord sent the Tenant a letter advising her that the Landlord would "start proceedings" against her. The Landlord's agents said from that time forward, the Tenant's daughter took care of her rent payments and there were no problems for approximately the next year. However, the Tenant's daughter then was involved in an automobile accident and suffered injuries including post traumatic stress disorder and depression with the result that the Tenant's rent payments again became erratic.

The Landlord provided a list of dates for the period, August 2011 to May 2012, which its agents claimed showed the dates her rent payments were deposited by the Landlord. The Landlord's agent, G.B., said the Tenant's payments were not always deposited by the Landlord the same day as the payment was made by the Tenant. The Landlord's

agent, D.P., claimed that the funds would have been deposited by the Landlord within a day. However, the Landlord's agent, D.P., also admitted that the Landlord had a post-dated cheque from the Tenant dated November 1, 2011 that the Landlord did not deposit until November 7, 2011. The Landlord's agent, D.P., argued that one could infer from the list of deposits that where two deposits were made for the same month or where a cheque was returned for non-sufficient funds, that the Tenant had made a late payment. However, the Landlord did not have any records at the hearing of NSF cheques for the period, August 2010 to July 2012. The Landlord's agents confirmed that the list of deposits was a summary prepared by the Landlord based on its bank records. The Landlord did not submit any other documentary evidence of the date of payment or bank records as evidence at the hearing.

During the hearing, the Landlord's agent, D.P., became upset when the Dispute Resolution Officer advised him that she could not infer that the Landlord deposited the Tenant's rent payments within a day of her making them especially in light of D.P.'s evidence that the Tenant's rent payment for November 2011 was not deposited by the Landlord for almost a week. I also advised the Landlord's agents that the Landlord's summary of bank deposits was hearsay evidence (given that the Landlord had provided no bank records) and unreliable for that reason. D.P. then began yelling at the Dispute Resolution Officer and accused her of being biased. The Dispute Resolution Officer asked D.P. if he had other evidence of the alleged late payments, however he continued to accuse the Dispute Resolution Officer of having already made up her mind to cancel the Notice and claimed that he would simply re-serve the Tenant with a One Month Notice and provide his payment documentation at the next hearing when the Tenant applied to cancel that Notice. The Dispute Resolution Officer cautioned D.P. that he would be asked to leave the conference call if he continued to be disruptive to which he responded that he would be leaving the conference call and did so. The Landlord's agent, G.B., also left the conference call.

### Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. RTB Policy Guideline #38 at p. 1 says as follows:

"Three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly late."

I find that the evidence provided by the Landlord is insufficient to conclude that the Tenant made 3 or more late payments. The only evidence provided by the Landlord's

agents in support of this allegation was a list of dates that the Tenant's rent payments were alleged to have been deposited by the Landlord. However, I find that this evidence is unreliable especially given that the Landlord's agents gave contradictory evidence as to when the rent payments were in fact deposited by the Landlord. Furthermore, the Landlord's agents admitted that they had postdated cheques from the Tenant but could not account for why the Landlord deposited them at later dates than the first of the month. While NSF cheques would be some evidence of a late payment, the Landlord alleged only one such NSF payment for the period, August 2011 to May 2012 but provided no reliable evidence (such as bank records) to corroborate that hearsay evidence.

In the absence of any reliable evidence of three late payments, I find that the Landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the One Month Notice to End Tenancy dated July 20, 2012 is cancelled and the tenancy will continue.

### Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated July 20, 2012 is cancelled. 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: August 22, 2012.

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Residential Tenancy Branch