



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

CNC

### 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").

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence properly submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary Issues*-The landlord supplied evidence that they submitted their evidence to the tenant via registered mail. The tenant said that she either did not receive the mail or collected the mail. I have accepted the landlord's evidence as I find it was properly submitted according to the Residential Tenancy Branch Rules of Procedure (Rules).

The tenant said that she did not send her evidence to the respondent, the landlord in this case, as required by the Rules. I therefore have not accepted her evidence; however the tenant was allowed to testify about her evidence.

### Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

### Background and Evidence

I heard undisputed evidence that this tenancy started on April 1, 2007, the tenant's current monthly obligation for rent is \$562.00, and that the tenant paid a security deposit of \$554.50 at the beginning of the tenancy.

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 October 25, 2012, was delivered to the tenant by leaving it with the tenant on that date, listing an effective end of tenancy on November 30, 2012.

The cause as stated on the Notice alleged that the tenant is repeatedly late paying rent.

The landlord's relevant evidence included the tenancy agreement, a resident ledger sheet, and the Notice.

In support of their Notice regarding the alleged late payments, the landlord testified that the tenant had been late rent payments for six different months during the past twelve months, and as proof, directed my attention to the tenant ledger sheets.

The ledger sheets indicated that the tenant was late in paying rent in November 2011, and January, April, July, August and October 2012.

When queried, the landlord stated that she never spoke with the tenant during this time to advise her that the repeated late payments would result in her eviction, stating that she had over 700 tenants in various properties, making personal contact impossible.

The landlord said that on three of the occasions, the tenant was issued a 10 Day Notice to End Tenancy for Unpaid Rent.

In response, the tenant said that, as a recipient of government income assistance, she was not aware of when her rent payments were late. The tenant also said that she asked for "eviction" notices so that she could bring them to the income assistance office to address rent payments.

The tenant also said that in the previous 5 years of the tenancy, she has been late in paying only once or twice; however issues with the Canada Revenue Agency may have resulted in late payments of rent.

### Analysis

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

Once the tenant made an 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 paying rent.

Residential Tenancy Branch Policy Guideline #38 states that three late payments of rent are the minimum number sufficient to justify a notice under these provisions. The landlord relies on this guideline to justify their Notice.

However, in the case before me, after considering all of the evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to substantiate the cause listed. In reaching this conclusion I was persuaded by the lack of written warnings to the tenant about the alleged infraction, with notice that a continuation of such late payments could lead to the end of the tenancy. I was also persuaded by the landlord's lack of any notice, written or oral, to the tenant that her payments were repeatedly late as I do not find the 10 Day Notice to End Tenancy for Unpaid Rent to be sufficiently explanatory to the tenant.

As the tenant was receiving government income assistance, I am not convinced that the tenant was aware that her rent payments were late, with the lack of notification from the landlord, which would allow the tenant to seek remedial action with the income assistance agency.

Due to the above, I therefore find that the landlord has submitted insufficient proof to prove the causes listed on the Notice, irrespective of Policy Guideline 38.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated and issued October 25, 2012, for an effective move out date of November 30, 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*.

### Conclusion

I grant the tenant's application seeking cancellation of the landlord's 1 Month Notice and the Notice is hereby cancelled with the effect that the tenancy will continue until ended in accordance with the *Act*.

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* and is being mailed to both the applicant and the respondent.

Dated: December 10, 2012.

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Residential Tenancy Branch