



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenant: CNC, CNR  
For the landlord: OPC, FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause.

The landlord applied for order of possession for the rental unit due to alleged cause and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are referred to in this decision.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent and the 1 Month Notice to End Tenancy for Cause?

Have the tenants breached the Act or tenancy agreement, entitling the landlord to an order of possession for the rental unit and to recover the filing fee?

### Background and Evidence

I heard undisputed evidence that the tenancy began on September 1, 2011, monthly rent is \$860.00, due on the last day of the month, and the tenants paid a security deposit of \$430.00 at the beginning of the tenancy.

This is the third dispute resolution proceeding between the parties, in less than half a year, each time dealing with the landlord's applications for an order of possession for the rental unit due to 10 Day Notices to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause.

Originally the landlord applied for the direct request process; however that application was reconvened to a participatory hearing on October 22, 2012. In that decision the Arbitrator determined that the 10 Day Notice issued by the landlord on September 2, 2012, was not valid and dismissed the landlord's application seeking an order of possession for the rental unit.

In a hearing on the landlord's application for an order of possession for the rental unit based upon a 10 Day Notice for unpaid rent and a 1 Month Notice for alleged cause, the Arbitrator determined that the landlord failed to prove the Notices were served on the tenants and dismissed the landlord's application.

In the present case, the landlord issued another 10 Day Notice to End Tenancy for Unpaid Rent, on January 2, 2012, listing the amount of \$850.00 as unpaid rent as of December 31, 2012, and a 1 Month Notice to End Tenancy for Cause on December 22, 2012, via registered mail.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified as to why the tenants had been served the 2 Notices.

The landlord's agent, the property manager, said that the tenants had made numerous late payments of rent in the last 12 months. As evidence, the landlord produced multiple 10 Day Notices to End Tenancy for Unpaid Rent, most being issued on the 2<sup>nd</sup> day of the month, with 2 being issued on the 3<sup>rd</sup> day of the month.

Upon enquiry, the landlord said that when he issued the latest 10 Day Notice, on January 2, 2012, the tenants paid the full amount owed on that same day.

Upon further enquiry, the landlord confirmed that he did not submit further written proof that the tenants had made repeated late payments, such as accounting records or receipts issued to the tenants.

The landlord agreed that on the day of the hearing, the tenants did not owe any unpaid rent.

In response, the tenants said that they had never made a late payment of rent and have no control over when the landlord deposits the rent cheques.

The tenants further stated that the landlord is engaged in a course of conduct meant to evict the tenants, for no cause.

The tenants also expressed they live in fear of being evicted due to the large number of Notices to End Tenancy they receive from the landlord.

### Analysis

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

Once the tenants made an application to dispute the Notices, the landlord became responsible to prove the 10 Day Notice to End Tenancy and the 1 Month Notice to End Tenancy are valid.

As to the 10 Day Notice to End the Tenancy issued on January 2, 2013, the landlord agreed that the tenants had paid rent on the same day, as allowed by the Act. **I therefore order the 10 Day Notice to End Tenancy date and issued on January 2, 2013, be cancelled.**

As to the 1 Month Notice to End Tenancy, dated and issued on December 22, 2012, I find the landlord submitted insufficient evidence to support that the tenants made repeated late payments as I find the 10 Day Notices submitted by the landlord, without specific oral evidence, do not prove the late payments. I was also provided no accounting records or receipts.

I further considered that the tenancy began on the first day of a month, yet the rent was due pursuant to the tenancy agreement was due on the 31<sup>st</sup> day of the month, I therefore was unable to determine if the landlord is attempting to require the tenants to pre-pay for the next month, which contradicts the requirement that rent is due on the first day of the rental period, or if rent for a month was due on the last day of the month. I therefore found that I could not rely upon the tenancy agreement to enforce the landlord's Notice.

**I therefore find that the 1 Month Notice to End Tenancy for cause, issued by the Landlord on December 22, 2012, is without merit and I order that it likewise be cancelled.**

As a result I find that this tenancy continues until it otherwise ends under the Act.

The tenants are reminded that pursuant to the tenancy agreement, rent payments are due and payable on the last day of the month.

As I have cancelled the 1 Month Notice to End Tenancy for Cause and the 10 Day Notice to End Tenancy for Unpaid Rent, I dismiss the landlord's request to recover the filing fee.

As I have cancelled the 1 Month Notice to End Tenancy for Cause and the 10 Day Notice to End Tenancy for Unpaid Rent, I therefore grant the tenants' application for dispute resolution, seeking cancellation of the Notices.

### Conclusion

The landlord's application is dismissed in its entirety, without leave to reapply, as the Notices are cancelled and set aside with the effect that this tenancy continues.

The tenants' application seeking cancellation of the Notices is granted.

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: January 30, 2013

---

Residential Tenancy Branch

