



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RAIWAL DEVELOPMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on March 2, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on October 1, 2008 as a fixed term tenancy with an expiry date of September 30, 2009 and then continued as a month to month tenancy. Rent is \$1,193.70 per month payable on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$600.00 on October 1, 2008.

The Landlord said he served the Tenants with a 1 Month Notice to End Tenancy for Cause dated February 27, 2013. The reason on the Notice to End Tenancy is for repeatedly late rent payments. The Landlord served the Notice on February 27, 2013 by personal delivery to the Tenants. The Effective Vacancy date on the Notice is March 31, 2013. The Tenants are living in the unit and the Landlord said he wants to end the tenancy.

The Landlord continued to say that the Tenants have been late with the rent 13 times since March 2010. As well the Landlord said the Tenants were issued a 10 Day Notice to End the Tenancy for Unpaid Rent on September 26, 2012 and the Tenant has been late with the rent payment for September, October, November and December, 2012 as well as January, 2013. The Landlord said they included a list of the late rent payments

and copies of all the rent receipts to prove the rent has been paid late many times. The Landlord said they want to end the tenancy.

The Tenant said that prior to September, 2012 the arrangement for paying the rent was that the Landlord or a representative of the Landlord would pick up the rent so it was not their responsibility when the rent was paid. Further the Tenant said after September, 2012 they had a hearing for disputes resolution scheduled with the Landlord so they thought they did not have to pay the rent for September, October, and November or until after the Hearing. The Tenant agreed that the January, 2013 rent payment was late, but the Tenant said she phoned the Landlord and the Tenant believed that the late payment was agreed to. The Landlord said she did not agree to the payment being late for January, 2013.

The male Tenant said that the Landlord has been very inconsistent and therefore they did not know when the rent payments were due. The Landlord said the tenancy agreement says the Tenant is to pay the rent on the first day of the rental period which is the 1<sup>st</sup> day of each month.

The Landlord said in closing that the Tenants have been late with many rent payments and there have been many NSF cheques, so the Landlord wants to end the tenancy as indicated in the 1 Month Notice to End Tenancy for Cause dated February 27, 2013.

The Tenant said in closing that the Landlord has been inconsistent so they believe their rent payments have only been late a couple of times.

### Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants did not have the right under the Act to withhold part or all of the rent for September, October, November and December 2012 as well as for January, 2013. Therefore I find the Tenants were late in paying the rent for those months.

Policy Guideline 38 says:

The *Residential Tenancy Act*<sup>1</sup> and the *Manufactured Home Park Tenancy Act*<sup>2</sup> both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

From the testimony and evidence from both the Landlord and the Tenants it is apparent that the Tenants have been late in paying the rent for September, October, November and December, 2012 as well as January, 2013. Consequently I find the Tenants have not established grounds to receive an Order to cancel the 1 Month Notice to End the Tenancy for Cause dated February 27, 2013 with an effective vacancy date of March 31, 2013. The Tenants application is dismissed in full without leave to reapply.

As the Tenant has been unsuccessful in this matter I order the Tenant to bear the cost of the filing fee of \$50.00 which they have already paid.

### Conclusion

The Tenants' application is dismissed without leave to reapply.

The Landlord's Notice to End Tenancy dated February 27, 2013 stands in full effect.

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: March 26, 2013

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Residential Tenancy Branch

