



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, OLC, FF

### Introduction

This hearing dealt with an application by the tenant seeking an order to set aside a One Month Notice to End Tenancy for Cause, an order to have the landlord comply with the Act, the regulations or the tenancy agreement and a monetary order for compensation or loss suffered under the Act, the regulations or the tenancy agreement. . Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is the tenant entitled to any of the above under the Act, the regulations or the tenancy agreement?

### Background and Evidence

The tenancy began on or about September 1, 2011.. Rent in the amount of \$1100.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$550.00.

The landlord gave the following testimony:

The landlord issued a One Month Notice to End Tenancy for Cause due to repeated late payment of rent. The landlord stated that the tenant has been late on a regular and repeated basis since moving in. The landlord adamantly disputes that they had ever illegally entered the tenants unit. The landlords felt that the tenant had invaded their privacy. The landlords stated that they did not make harassing phone calls. The

landlords stated they would call the tenant on the 2<sup>nd</sup> or 3<sup>rd</sup> of the month asking about the rent and when they would receive it. The landlords request an order of possession.

The tenant gave the following testimony: The tenant stated that the landlords have illegally entered his suite on three occasions and as recent as May 16, 2013. The tenant seeks \$1100.00 compensation for the loss of quiet enjoyment and an order to restrict the landlords' ability to enter the unit. The tenant stated that he has been late with the rent three times in the last nine months but has always paid up in full. The tenant stated that he disagrees with the amount of late payments as claimed by the landlord. The tenant stated that they are able to put any date on the receipt that they wish. The tenants used to pay the landlord cash when they lived upstairs. The landlords moved to different residence in August 2012. The tenant stated that since they moved he has made it a practice to mail out the rent on the first of every month.

### Analysis

When a landlord issues a notice to end tenancy they must provide sufficient evidence to support their issuing the notice. The landlords provided documentation to support their claim. The Residential Tenancy Policy Guideline 38 deals with this issue 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".*

In the tenants own testimony he conceded that "I mail out the rent on the first of every month" and "I've probably been late three times in the last nine months". The tenancy agreement signed by both parties clearly reflects that the rent is due on the first of each month. I am satisfied that the tenant has been repeatedly late in paying his rent and that

the tenancy must end. The One Month Notice to End Tenancy for Cause dated April 30, 2013 remains in full effect and force.

I grant the landlord an order of possession pursuant to Section 55 of the Act. As the tenant has paid the rent for this month and is not a danger to person or property, the order of possession will take effect at 1:00 p.m. on June 30, 2013. The landlord must serve the tenant with the order of possession and if needed have the order enforced through the Supreme Court as an order of that Court.

As I have found that the tenancy has ended I need not address the issue of having the landlord comply with the Act, the regulations or the tenancy agreement.

The tenant has made a claim for \$1100.00 for loss of quiet enjoyment.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant did not provide sufficient evidence to satisfy me of all four grounds and therefore has not met the burden of proof. I dismiss this portion of the tenants' application.

Conclusion

The tenants' application is dismissed in its entirety. The Notice remains in full effect and force.

The landlord is granted an order of possession for 1:00 p.m. on June 30, 2013.

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 04, 2013

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Residential Tenancy Branch

