



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

### Issue to be Decided

Should the notice to end tenancy be set aside?

### Background and Evidence

This tenancy is one of long duration, in excess of 12 years. The parties agreed that on November 2, the landlord served on the tenant a one month notice to end tenancy for cause (the "Notice"). The Notice alleges that the tenant has been repeatedly late paying rent and that she has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The facts are not in dispute. The tenant was in the practice of dropping off rent at the landlord's home or at their place of business and in the month of September 2013, she did not drop off the rent on September 1, the date it was due. The landlord served the tenant with a notice to end tenancy for unpaid rent and on September 5, the tenant paid the full amount of rent owing. The tenant explained that she had mailed the cheque to the landlord in advance of September 1, but had inadvertently transposed 2 of the numbers and therefore the letter was returned to her.

A legal rent increase was set to take effect in October 2013 and the tenant paid \$2,112.00, the amount she had paid every month prior to October rather than the new amount of \$2,192.00. On October 5, the landlord served her with a notice to end tenancy for unpaid rent and the tenant paid the additional \$80.00 on October 7.

The tenant gave the landlord a cheque for November's rent at the end of October but post-dated it for December 1 and listed the amount as \$2,190.00 rather than the \$2,192.00 which was due. The landlord served the tenant with a 10 day notice to end tenancy for unpaid rent, shortly after which the tenant paid the rent. The tenant testified that she simply wrote the wrong amount and the wrong date on the cheque in error.

The landlord testified that she has been trying to inspect the property for several months and has made 3 appointments with the tenant, on June 25, August 30 and October 5, providing a written notice of entry each time, but on each occasion the tenant was unavailable. The tenant claimed that the landlord occasionally made appointments but did not show up at the appointed time.

### Analysis

First addressing the question of whether the tenant has significantly interfered with or unreasonably disturbed the landlord, at the hearing the landlord acknowledged that she was unaware that she was entitled to enter the property when the tenant was not at home. Because the landlord has the legal right to enter the property in the tenant's absence provided she has provided proper advance notice, I find that the reason the inspections did not take place was not because of the tenant's actions, but because the landlord was unaware of her rights. I therefore find that the Notice cannot be sustained on this ground.

Turning to the question of repeated late payment of rent, Residential Tenancy Policy Guideline #38 provides that "Three late payments are the minimum number sufficient to justify a notice under these provisions." It further provides that in exceptional circumstances, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

I accept the tenant's explanations for why the rent was late on each occasion and it is clear to me that the late payments were not late because of any malice, but because the tenant was not careful in ensuring that letters were properly addressed and that cheques were written with the correct date and amounts payable. In particular, I find that the oversight of the addition of the amount of the rent increase which took effect in October to be a reasonable oversight which was instantly corrected and therefore should not be considered part of the trio of late payments.

In the circumstances and in light of the absence of intent, I find that there are insufficient grounds to support the allegation of repeated late payment of rent and I order that the Notice be set aside and of no force or effect. **However, the tenant is put on notice that should she make further errors which prevent the landlord from**

**receiving rent when it is due, regardless of whether she intends to make those errors, she will have paid rent late a sufficient number of times to support another notice to end tenancy.**

Conclusion

The Notice is set aside and the tenancy will continue.

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: December 19, 2013

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Residential Tenancy Branch

