



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sterling Management Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNC, FF

### Introduction

The tenant applied to cancel a 1 Month Notice ending tenancy for cause and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The parties confirmed receipt of evidence and the hearing package within the required time-frames.

### Issue(s) to be Decided

Should the 1 Month Notice ending tenancy for cause issued on November 19, 2013 be cancelled?

Is the tenant entitled to filing fee costs?

### Background the Evidence

The tenancy commenced on October 5, 2012; rent is \$950.00 per month.

A copy of the signed tenancy agreement and addendums were supplied as evidence. Term 2 of the agreement indicated rent is due on the 1<sup>st</sup> day of each month. An initialed "Additional Terms" page; clause 5(g) indicated:

“Rent received after the 1<sup>st</sup> – including postdated cheques – will be considered *Late*, any rent received after the 5<sup>th</sup> is subjected to a \$25 *late charge*.”

The tenant initialed another page entitled “Rules and Regulations” which set out the requirement that other occupants not be disturbed.

The tenant resides in a 3 bedroom unit that is part of a 6 unit complex. He resides with his seventeen and eighteen year old children.

The landlord and the tenant agreed that a 1 month Notice to end tenancy for cause was issued on November 19, 2013; the tenant applied to cancel the Notice within 10 days.

The reasons stated for the Notice to end tenancy were that:

- the tenant has been repeatedly late paying rent;
- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord;
- that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant and to jeopardize a lawful right or interest of another occupant or the landlord;
- the tenant has breached a material term of the tenancy that was not corrected within a reasonable time; and
- that the tenant has assigned or sublet the rental unit without written consent.

A copy of a ledger was supplied as evidence. There was no dispute that rent payments have been made on the following dates:

- January 8, 2013;
- February 5, 2013;
- March 5 and 19 2013;
- April 3, 2013;
- May 3, 2013;
- June 4, 2013;
- July 5, 2013;
- November 5, 2013;
- December 4, 2013; and
- January 3, 2014.

The landlord issued a receipt for December 2013 rent paid; a January 2014 rent receipt was issued for use and occupancy only.

The landlord's office is closed on weekends, when rent cheques may be placed through a mail slot. The landlord said that when the rent due date falls on a weekend payment is not considered as late if the payment is received on the next business day.

The landlord confirmed that they do not impose a late rent payment fee until after the 5<sup>th</sup> day of each month, but that the tenancy agreement and additional terms documents clearly indicate rent is due on the 1<sup>st</sup> day and is considered late if given after the 1<sup>st</sup> day of each month. The landlord would have explained this to the tenant when he signed the tenancy agreement and the "Additional Terms" document, at the start of the tenancy.

The tenant stated he was confused by the term and that he believed any payment made by the 5<sup>th</sup> day of the month would not be considered late. The tenant had initialed the "Additional Terms" page, but had not fully read the terms included. The tenant said he had been told that if rent was paid by the 5<sup>th</sup> day of each month he would not be considered late.

The tenant did not know there was a mail slot where he could place rent payments and since the landlord never addressed the payments previously made he believed that he correctly understood that rent must be paid no later than the 5<sup>th</sup> day of each month. Even after the tenant received the Notice ending tenancy he continued to believe that he could pay the rent by the 5<sup>th</sup> day of each month.

The tenant's advocate submitted that the landlord never disabused the tenant of his belief that the rent payments were not being made on time and that they have chosen to use this reason as they lack evidence in support of the other reasons given on the Notice ending tenancy.

In relation to the balance of the reasons given on the Notice, the landlord referred to copies of anonymous letters of complaint; these were supplied as evidence. Letters were issued by 2 different occupants of the complex. One person submitted letters of complaint received by the landlord on October 30, 2013; November 5, November 12, 2013 and December 13, 2013.

The October letter made general accusations of drug use, the smell of marijuana, house parties, people smashing bottles on the lawn, drunken behaviour, fighting, screaming, swearing and littering. This letter was not given to the tenant until the evidence for this hearing was served.

On November 5, 2013 the tenant was issued a "Breach Letter" which he received on November 6, 2013. The letter informed the tenant that complaints had been received in relation to the smell of drug use, reckless driving in the parking lot, yelling, fighting and parties by underage individuals. The letter warned that further problems would result in eviction as the tenant was breaching a material term of the tenancy.

The November 12, 2013 letter of complaint accused the tenant's teenage children of having parties, using drugs, littering and driving on the lawn.

On December 13, 2013 the landlord received a 3<sup>rd</sup> letter from the anonymous occupant, alleging further marijuana use. On the same date a 2<sup>nd</sup> anonymous letter, written by another individual, was supplied, alleging drug use and parties. This letter did not identify the unit in question or name the tenant.

A 4<sup>th</sup> letter was supplied by the same individual who had given the landlord 3 other letters of complaint. This person indicated some occupants had smoke allergies and suggested a meth lab might be in the tenant's unit.

The landlord is aware of the identity of the complainant who wrote the initial letters, but the details of the allegations made, to the landlord's knowledge, were not discussed with the tenant or investigated. After the November 12, 2013 letter of complaint was received the Notice ending tenancy was issued on November 19, 2013.

The landlord was not aware of any police reports in relation to the allegations made. The landlord said that in a past hearing anonymous submissions were given weight.

The tenant responded that he had not contacted the landlord to discuss the November 5 breach letter as he became depressed; he was working full days and was being laid off from his job on November 14, 2013. The tenant then received the Notice ending tenancy and then sought out assistance from the advocate.

The tenant said that he is home every evening and denied his children were causing a disturbance. The tenant stated he was not responsible for the driving behaviour of people in the parking the lot.

The landlord requested an Order of possession.

The landlord confirmed that the tenant has not sublet the rental unit.

### Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenancy should end for the reasons indicated on the Notice.

In relation to repeated late rent payments, I have considered Residential Tenancy Branch policy which suggests that 3 late payments are the minimum number sufficient to justify a Notice ending tenancy. 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. Policy also suggests that a landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

First I will respond to rent payments made between January and July 2013; with the exception of March and January, rent was paid by the 5<sup>th</sup> day of each month. Rent from August to October 2013 was paid on the 1<sup>st</sup> day of each month; with the tenant reverting to payments by the 5<sup>th</sup> day of the month from November 2013 to January 2014.

I considered the tenant's submission that he believed rent payments made by the 5<sup>th</sup> day of the month were sufficient. This is supported by the fact that up until July 2013, on the whole, payments were made within the 5<sup>th</sup> day of each month. No action was taken by the landlord, such as the issuance of a 10 day notice for unpaid rent, and no written warning was given to the tenant during this time.

As the landlord failed to act in a timely manner after the July 2013 late payment was made, I find that the landlord then waived their right to rely upon the rent payment provision of the tenancy agreement. The landlord did not issue any warning or take any steps to indicate the tenant was in breach of the rent payment requirement during this time or during the 3 months following July 2013 when rent was paid on the 1<sup>st</sup> day of each of August, September and October. When rent was paid on November 5, 2013 the landlord chose to issue the Notice ending tenancy, citing multiple reasons including late rent payment.

Therefore, I find that the Notice is not supported for the reason of repeatedly late rent payments.

It is now understood by the tenant that he may deposit a money order into a mail slot at the landlord's office, so that payment may be in the hands of the landlord no later than the 1<sup>st</sup> day of each month. If the 1<sup>st</sup> day of a month falls on a weekend or other day the office is closed; payment must be made so that the landlord has the payment in their hands when the office opens on the next business day.

In relation to the balance of the reasons indicated on the Notice ending tenancy, I find, on the balance of probabilities that the landlord has failed to prove the allegations made by 2 anonymous complainants. Neither of the complainants signed the letters of complaint; no more than vague allegations were made, no evidence of calls to the police or any investigation by the landlord was evident.

When facing allegations a party is entitled to an opportunity to respond to those who have accused him and at the very least to be given a detailed history of specific events that are alleged. When the landlord is ending the tenancy based on the sole evidence of anonymous complainants, in the absence of any corroboration, I find that the principle of fairness overweighs anonymous allegations.

Therefore, I find that the landlord has failed to prove the tenancy should end based on the balance of the reasons indicated on the Notice.

Therefore, I find that the 1 month Notice ending tenancy for cause issued on November 19, 2013 is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

As the tenant's application has merit I find that he is entitled to recover the \$50.00 filing fee which may be deducted from the next month's rent due.

I note, pursuant to 47 of the Act, that a tenant is responsible for the behaviour of those he has allowed on the residential property.

### Conclusion

The 1 month Notice ending tenancy issued on November 19, 2013 is of no force or effect.

The tenant is entitled to recover the filing fee cost.

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 22, 2014

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Residential Tenancy Branch

