



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, LRE, O, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel two notices to end tenancy and to an order restricting the landlord's access to the rental unit.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Residential Tenancy Branch Rule of Procedure 2.3 states that an Arbitrator may dismiss unrelated disputes that are contained in a single application. As the tenant has applied to cancel a notice to end tenancy and an order to restrict the landlord's access to the rental unit, I find that the additional order sought by the tenant is unrelated to the issue of the notice to end tenancy.

As such, I dismiss the portion of the tenant's Application seeking to suspend the landlord's right to access the rental unit, with leave to reapply at a future date.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in her Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; a 10 Day Notice to End Tenancy for Unpaid Rent; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began in July 2012 as a month to month tenancy for the monthly rent of \$550.00. The parties disagree on any stipulation as to when in the month that rent is due. The landlord submits that he has always expected that rent is due on the 1<sup>st</sup> of each month. There is no written tenancy agreement.

The tenant submits that the landlord has been accepting rent throughout the month for the duration of the tenancy and has not indicated to her that payment of rent as practiced was ever a problem. She also states that the landlord is not always available at the start of each month for the payment of rent.

The tenant submitted into evidence copies of rent payment receipts as follows:

Receipt Date	Rental Month
May 3, 2013	Portion of May 2013
June 14, 2013	Balance of May 2013
June 28, 2013	Portion of June 2013
July 12, 2013	Balance of June 2013
July 26, 2013	Portion of July 2013
August 9, 2013	Balance of July 2013
August 23, 2013	Portion of August 2013
September 6, 2013	Portion of August 2013
September 26, 2013	Balance of August 2013 and portion of September 2013
October 4, 2013	Balance of September 2013
October 21, 2013	Portion of October 2013
November 7, 2013	Portion of October 2013
November 15, 2013	Balance of October 2013 and portion of November 2013
December 1, 2013	Portion of November 2013
December 14, 2013	Balance of November 2013 and portion of December 2013
December 28, 2013	Balance of December 2013 and portion of January 2014

The tenant also provided into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on March 8, 2014 with an effective date of April 30, 2014 citing the tenant has been repeatedly late paying rent.

The parties also agree that on April 1, 2014 the landlord issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of April 10, 2014 citing the tenant owed \$1,050.00 due April 1, 2014.

The tenant testified that she had attempted to contact the landlord on the 5<sup>th</sup> day and left a message on his mother's answering machine, because his cell phone was not working, that she had most of the rent and would have the balance in a few days. The tenant testified that she has the rent that is owed according to the 10 Day Notice and can pay it anytime. The landlord testified that he had not received any messages on his cell phone and that he never uses his mother's phone or answering machine.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving the tenants notice to end the tenancy if the tenant is repeatedly late paying rent. A notice issued under this

section must end the tenancy effective on a date that is not earlier than a month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline 38 states that 3 late payments are the minimum number sufficient to justify a notice under this provision. The Guideline goes on to say that 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 case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

In the case before me the tenant submits that there was not an agreed upon payment date for rent. Based on this and the landlord's uncertain testimony I find that there was never an agreed upon date for the payment of rent.

However, I find that, on a balance of probabilities, that rent would have been due either before or during the month of the rental period. From the receipts provided by the tenant I find that in all the months recorded show that an initial rental payment was made in the rental period month and the balance of payment was made the following month.

Based on the above, I accept that the tenant has been late paying rent on at least 3 occasions since May 2013 and as such the landlord has sufficient cause to end the tenancy.

### Conclusion

As I have found the landlord has cause to end the tenancy I dismiss the tenant's Application in its entirety.

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: May 08, 2014

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Residential Tenancy Branch

