



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding The Laurel c/o Bayside Property Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause.

The tenant and an agent for the landlord company attended the hearing and the landlord's agent also called one witness. The parties and the witness each gave affirmed testimony.

At the commencement of the hearing, the parties agreed that the application for dispute resolution should be amended to show that the landlord's agent is not a party and that the landlord is the landlord company as shown on the face of this Decision. The amendment was allowed, by consent.

During the hearing, the landlord's agent advised that the tenant had not provided to the landlord any of the evidence that the tenant provided to the Residential Tenancy Branch. That evidence is therefore not considered in this Decision. The parties were given the opportunity to cross examine each other on all other evidence and the testimony provided, which is considered in this Decision.

No other issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

### Background and Evidence

The landlord's agent testified that this tenancy began on March 1, 2012 as a fixed term tenancy to expire on August 31, 2012 and then reverted to a month-to-month tenancy,

and the tenant still resides in the rental unit. Rent in the amount of \$878.00 per month is currently payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. A copy of the tenancy agreement has been provided. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent further testified that the tenant has been repeatedly late paying rent and has provided a copy of a tenant ledger that runs from November 1, 2013 to July 1, 2014. The ledger shows that the tenant has paid rent after the first day of each month numerous occasions. Also provided are copies of 10 Day Notices to End Tenancy for Unpaid Rent or Utilities dated May 3, 2014; April 2, 2014; January 4, 2014; October 3, 2013; June 4, 2013; May 3, 2013; November 3, 2012; October 3, 2012; September 6, 2012; and June 4, 2012. The landlord's agent testified that the tenant was served with all of the notices and didn't take them seriously.

On May 20, 2014 the landlord issued a 1 Month Notice to End Tenancy for Cause and a copy has been provided. The notice is dated May 20, 2014 and contains an expected date of vacancy of June 30, 2014. The reason for issuing the notice is stated to be that: "Tenant is repeatedly late paying rent." The notice was served by the building manager on May 20, 2014. The tenant paid rent for June and July, 2014 by the first day of each month and in both cases the landlord issued a receipt that is clearly marked "For Use and Occupancy Only – Does not constitute reinstatement of the Tenancy Agreement." Copies of the receipts have been provided.

Since the tenant has paid rent in full for the month of July, the landlord requests an Order of Possession effective July 31, 2014 at 1:00 p.m.

The landlord's witness testified that each of the notices to end tenancy issued by the landlord were served by him on the tenant and in each case but one, the notices were posted to the door of the rental unit. He further specified that the 1 Month Notice to End Tenancy for Cause was served by posting it to the door of the rental unit on May 20, 2014.

The tenant testified that for the last 2 ½ years, the tenant has been working and going to school. The tenant obtained funds once per month from EI while attending school and it was always received during the first week of each month making it impossible to pay rent by the first of the month. However, the tenant always told the landlord's witness

when rent would be paid and rent was always paid within 5 days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The tenant also testified that the tenant and a friend who resides with the tenant have stable jobs and there will be no further issues with paying rent on time. The landlord never had to chase the tenant to get the rent, and the tenant has demonstrated that no future issues will arise with late payments by paying rent on time for June and July, 2014.

The tenant requests that the notice to end tenancy be cancelled.

### Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due under the tenancy agreement. In this case, I have examined the tenancy agreement and it is clear that rent is payable on the 1<sup>st</sup> day of each month.

I refer to Residential Tenancy Branch Policy Guideline #38 which states as follows:

“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.

“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. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.

“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.”

I have reviewed the tenant ledger and the notices to end tenancy provided by the landlord, and I find that during this calendar year the tenant has received notices to end tenancy for unpaid rent in January, April and May, 2014. In my view, and according to the Policy Guideline, that is sufficient for considering that rent is repeatedly late. I also find that those payments are not far apart since they are all within a 5 month period. The landlord's witness testified that he served all of the notices to end tenancy and that all but one were served by posting them to the door of the rental unit. Assuming that is the method of service used for the May 3, 2014 notice to end tenancy, that notice would be deemed to have been served on May 6, 2014 and the tenant paid the rent on May

10, 2014. The *Act* states that the notice is of no effect if the rent is paid within 5 days, which I find it has. The landlord then issued a 1 Month Notice to End Tenancy on May 20, 2014 which was served on the tenant that day by posting it to the door of the rental unit. As a result, I find that the landlord acted in a timely manner after the most recent late rent payment and the landlord has established that rent has been repeatedly late.

I have also reviewed the 1 Month Notice to End Tenancy for Cause and find that it is in the approved form and contains information required by the *Act*. In the circumstances, I cannot find that the notice should be cancelled.

The landlord has requested an Order of Possession effective July 31, 2014 since the tenant has paid rent in full for this month. The *Act* states that where a tenant disputes a notice to end tenancy, if the application is dismissed or the notice is upheld, and where the landlord orally requests an Order of Possession, I must grant one. Accordingly, I hereby dismiss the tenant's application without leave to reapply and I grant an Order of Possession in favour of the landlord effective July 31, 2014 at 1:00 p.m.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective July 31, 2014 at 1:00 p.m.

This order is final and binding and may be enforced.

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: July 16, 2014

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Residential Tenancy Branch

