



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”) served to the Tenant for repeatedly paying rent late.

The Landlord and Tenant appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence in advance of the hearing. At the start of the hearing I determined that the Tenant’s Application and the written evidence of the parties had been served in accordance with the *Residential Tenancy Act* (the “Act”) and the Rules of Procedure. I also determined that the Tenant had disputed the Notice within the time limits stipulated by Section 47(4) of the Act.

The parties confirmed that the rent payable under the signed tenancy agreement was due on the first day of each month. The Landlord testified that the Tenant had failed to pay rent on time for the months of March, April, and May, 2014. The Landlord provided written evidence in the form of notices to end tenancy for unpaid rent relating to these months to support his oral testimony for these late payments.

The Tenant did not dispute the late payments presented by the Landlord but submitted that the previous Landlords for this tenancy had never taken issue with late payment of rent and that the Tenant would pay rent whenever he got paid which varied from month to month.

The Tenant was informed of Section 26(1) of the Act which states that a Tenant must pay rent when it is due under a tenancy agreement. The Tenant was also informed of Policy Guideline 38 which explains that three late payments of rent are the minimum number sufficient to justify a Notice under these provisions. I also explained that the serving of the first notice to end tenancy for unpaid rent by the Landlord to the Tenant

was clear evidence that the Landlord had an expectation that rent was payable on the first day of each month and not when the Tenant had funds available to make payment.

The Landlord and Tenant continued to make submissions during the hearing which then concluded with a discussion around a mutual agreement to end the tenancy.

### Analysis & Conclusion

Pursuant to Section 63 of the Act, the arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

The Landlord and Tenant both agreed to end the tenancy on **September 30, 2014** at which point the Tenant will vacate the rental suite. The Landlord is issued with an Order of Possession effective for this date. The Tenant is still obligated to pay rent for the duration of the tenancy on the first day of each month, as required by the written tenancy agreement.

This agreement does not stop the Landlord from ending the tenancy earlier with a notice to end tenancy for unpaid rent, if the Tenant fails to pay rent on the due date. This agreement is fully binding on the parties. The rights and obligations of both parties in relation to the return of the security deposit paid, still applies at the end of the tenancy.

### Conclusion

For the reasons set out above, I dismiss the Tenant's Application and hereby grant an Order of Possession in favor of the Landlord effective **at 1:00 pm on September 30, 2014**. This order may be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit in accordance with the above agreement.

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 23, 2014

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Residential Tenancy Branch

