



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent issued on May 16, 2014, to cancel a 1 Month Notice to Tenancy for Cause issued on May 18, 2014 and to recover the filing fee from the landlord.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Preliminary matters

At the outset of the hearing the tenants stated that they have vacated the rental premises. The tenants stated that they are not seeking to have the tenancy reinstated, however, seek to recover the filing fee from the landlord as they believe the notices to end the tenancy were without merit.

### Issue to be Decided

Are the tenants entitled to recover the filing fee from the landlord?

### Background and Evidence

The tenancy began on April 22, 2013. Rent in the amount of \$800.00 was payable on the first day of the rental period which falls on the 30/31 day of each month. A security deposit of \$400.00 was paid by the tenant.

On November 1, 2013, the tenancy agreement was amended by the parties to include a co-tenant and the rent payable under the agreement was increased to \$900.00.

The tenant testified that the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 16, 2014, alleging that they failed to pay the full amount of rent that was due on October 31, 2013. The tenant stated however, the amount the landlord was claiming was the difference between the old rent \$800.00 and the new rent of \$900.00. The tenant stated the new tenancy agreement was not signed until November 1, 2013 and the new rent would not be payable until the end of November 2013 as October 2013 rent was paid under the original tenancy agreement. Filed in evidence are copies of the original tenancy agreement and the amended tenancy agreement.

The tenant testified that the landlord also issued a 1 Month Notice to End Tenancy for Cause, issued on May 18, 2014. The reason stated in the notice to end tenancy was that the tenant is repeatedly late paying rent. The tenants deny the claim.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice

The landlord testified that the rent is due on the 30/31 of each month and the tenant has been consistently late. Filed in evidence are receipts issued to the tenants, which supports the receipts were not issued on the last day of the month.

The tenant testified that they have always had the rent and that they always attempted to pay rent when due, however; often the landlord was not available to collect the rent Filed in evidence are text messages.

The text message from the landlord to the tenant dated February 2, 2014, the landlord is requesting rent. The text message date March 1, 2014, and March 3, 2014, the landlord is requesting rent. The text message dated May 3, 2014, the landlord is requesting rent.

### Analysis

Based on the above, the testimony and evidence, an on a balance of probabilities, I find as follows:

In this case the tenant received a 10 Day Notice to End Tenancy for Unpaid Rent, issued on May 16, 2014. The notice indicated the tenants failed to pay \$100.00 that was due on the 31<sup>st</sup> of October 2013. However, the new tenancy agreement was not entered into until November 1, 2013 and October rent was already due and owing. I find that as the amended tenancy agreement was not signed until November 1, 2014, the effective date of the new rent would be the next rental month. Therefore, I find the 10 Day Notice to End Tenancy for Unpaid Rent, was not a valid notice.

In this case, the tenant received a 1 Month Notice to End Tenancy for Cause, issued on May 18, 2014.

Under the *Residential Tenancy Act* 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.

Although both parties have provided a different version of events regarding the payment of rent, I accept the landlord's version, that the tenant was repeatedly late paying rent because the text messages filed as evidence by the tenant, show the landlord on at least three occasions was asking the tenant for rent after the date rent was due. Further the copies of the receipts filed in evidence confirm rent was not received by the landlord on the date rent was due. I find on the balance of probability that the tenants were late paying rent on three occasions. Therefore, I find the 1 Month Notice to End Tenancy for Cause, was a valid notice to end the tenancy.

As I have found the notice to end tenancy issued on May 18, 2014, valid, I find the tenants are not entitled to recover the filing fee from the landlord.

Therefore, I dismiss the tenants' application to recover the cost of the filing fee.

### Conclusion

The tenants' application is dismissed.

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 17, 2014

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Residential Tenancy Branch

