



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, CNC, RR, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. To End the Tenancy early and obtain order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel an a one month notice to end tenancy (the "notice");
2. Allow a tenant to reduce rent for repairs; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed 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.

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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the notice to end tenancy issued on August 7, 2014, be cancelled?  
Is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy began on May 1, 2014. Rent in the amount of \$1,350.00 was payable on the first of each month. A security deposit of \$675.00 was paid by the tenant.

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on September 7, 2014.

The reason stated in the notice to end tenancy was:

- Tenant is repeatedly late paying rent.

The landlord testified that when he accepted the security deposit from the tenant he gave the tenant the keys to the rental unit. However, when she moved into the rental unit on May 1, 2014, she did not pay rent as required and it was not until May 15, 2014 that rent was received.

The landlord testified that the tenant failed to pay June 2014, rent and on June 2, 2014 he received a portion of rent in the amount of \$675.00 and the balance owing was not paid until two weeks later.

The landlord testified that the tenant failed to pay August 2014, rent and on August 3, 2014, he received a portion of rent in the amount of \$1,000.00. The landlord stated the tenant was served with a 10 Day Notice to End Tenancy; however, the tenant paid the balance owing within 5 days and as a result that notice was cancelled.

The tenant testified that she agreed she was late paying May 2014, and June 2014, rent. The tenant testified that she withheld a portion of August 2014, rent, however, paid that rent within five days of receiving the notice.

### Analysis

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

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant is repeatedly late paying rent.

Section 26 (1) of the Act, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case the tenant admitted rent was late in May 2014 and June 2014. The tenant also admitted she did not pay full rent for August 2014 as she withheld a portion of rent.

However, the tenant did not have the right under the Act to deduct a portion of her rent. Therefore, I find the evidence supports that the tenant has been repeatedly late paying rent. As a result, I find the notice was issued for the reasons given on the notice is and is a valid notice under the Act. Therefore, I dismiss the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause issued on August 7, 2014.

In this circumstance the tenant has paid rent for the month of October 2014. Therefore, pursuant to section 66 of the Act, I find an extension of the effective vacancy date is appropriate. Therefore, I find the tenancy will legally end on October 31, 2014.

As the tenancy is legally ending, I find there is no requirement for me to hear the tenant's application to reduce future rent. As the tenant was not successful with their application, I find the tenant is not entitled to recover the cost of the filing fee.

As the tenant's application is dismissed and the landlord has made an application for an order of possession, pursuant to section 55 of the Act, I must grant this request. I find that the landlord is entitled to an order of possession effective **October 31, 2014 at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court

As the landlord has been successful with their application, I find the landlord is entitled to recover the filing fee from the tenant. Therefore, I authorize the landlord to deduct the amount of \$50.00 from the tenant's security deposit in full satisfaction of the award.

### Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession. I grant the landlord a monetary order for the cost of filing their application and the landlord is authorized to deduct that amount from the security deposit if full satisfaction of the claim.

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: October 14, 2014

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Residential Tenancy Branch

