



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNC, FF

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to provide evidence; make relevant submissions, in writing and orally pursuant to the Rules of Procedure; and, to respond to the submissions of the other party.

### Preliminary and Procedural Matters

I noted that in filing this Application the tenant provided the same mailing address for himself and the landlord. The parties confirmed that the tenant resides in a separate basement suite and the landlord lives on the main level of the same residential property. I amended the application to record the rental unit as that described by the landlord on the 1 Month Notice to End Tenancy.

In filing his Application the tenant indicated that he was requesting an extension of time to file to dispute the Notice to End Tenancy; however, I determined this request was unnecessary as the tenant had filed to dispute the Notice to End Tenancy within the time limit provided in the Act.

During the hearing the landlord orally requested that an Order of Possession be provided to her with an effective date of November 30, 2014 and I have considered that request under section 55 of the Act.

It should be noted that after I heard from both parties I verbally gave my decision and reasons to the parties. The tenant became argumentative and started to rant and accuse the landlord of fraud. Given both parties alleged the other had provided false evidence I informed the parties of review provisions where a party has evidence of fraud. Nevertheless, the tenant resumed his rant and since he failed to comply with my instruction to cease I proceeded to end the teleconference call. Inappropriate conduct is not permissible under Rule 8.7 of the Rules of Procedure which I have reproduced below for further reference.

### **8.7 Interruptions and inappropriate behaviour at the dispute resolution proceeding**

Disrupting the other party's presentation with questions or comments will not be permitted. The arbitrator may give directions to a party, to a party's agent or

representative, a witness, or any other person in attendance at a dispute resolution proceeding who presents rude, antagonistic or inappropriate behaviour. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution proceeding and the arbitrator may proceed with the dispute resolution proceeding in the absence of the excluded party.

#### Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession as requested during the hearing?

#### Background and Evidence

The parties entered into a verbal tenancy agreement for a tenancy set to commence June 2013 for the monthly rent of \$600.00 due on the 1<sup>st</sup> day of every month. Since June 2014 the landlord required and the tenant has been paying rent of \$620.00 in the absence of a Notice of Rent Increase in the approved form. Both parties testified that the tenant pays the landlord rent in cash.

On September 14, 2014 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) with a stated effective date of October 31, 2014. The Notice indicates the reason for ending the tenancy is that the tenant has been repeatedly late paying rent.

The landlord testified that she personally served the tenant with the Notice on September 14, 2014 in the presence of her son as a witness. The tenant testified that he was personally served with the Notice on September 18, 2014 although I noted that on his Application for Dispute Resolution he indicated that he received the Notice on September 14, 2014. In either event, the tenant failed to dispute the Notice within the time limit for doing so.

The landlord submitted copies of rent receipts showing the tenant paid rent late the following times: September 2, 2013; April 2, 2014; and, September 2, 2014. The landlord confirmed that the tenant was given the original rent receipt and she retains the carbon copy in her receipt book. The landlord was forthcoming in stating that she failed to give receipts for every cash payment.

In addition to the late payments reflected by way of the receipts, the landlord verbally testified that the tenant also paid rent late for the months of July 2014 and August 2014 but she did not issue receipts for these months. The landlord testified that for the month of July 2014 the tenant paid the rent on July 3, 2014 and for the month of August 2014 he paid the rent on August 3, 2014.

The tenant denied paying rent late and claimed to have paid rent on or before the 1<sup>st</sup> for every month. The tenant described how he would go to the bank or ATM and withdraw the rent money and then knock on the landlord's door on the 1<sup>st</sup> day of every month to present her with

cash. The tenant submitted that on occasion the landlord was not home when he wanted to pay rent on the 1<sup>st</sup> and if she returned home later in the evening he waited until the following day to return to her residence to present the landlord with the rent.

The landlord refuted the tenant's testimony and claimed that she is always home in the evenings and for the months of July, August and September 2014 she provided very detailed and specific testimony as to her efforts to collect rent from him. The landlord described how for these months she phoned him, knocked on his door, or approached him in the driveway on the 2<sup>nd</sup> of the month to enquire about rent. She was often met with excuses as to why he had not yet paid the rent including:

- On July 2, 2014 the landlord phoned the tenant about the rent and he told her he was sick. The landlord asked to see a doctor's note to which the tenant responded by saying that was a privacy issue. On July 3, 2014 the tenant came with the rent and he did appear as though he had a cold and the landlord offered him some rice which he accepted.
- On August 2, 2014 landlord phoned the tenant about the rent and he responded by informing her he did not have cash on hand. Later, the landlord knocked on the tenant's door with the intention to collect rent or serve him with a 10 Day Notice to End Tenancy for Unpaid Rent but the tenant did not answer the door. Since the tenant paid the rent the following day the landlord did not serve him with the 10 Day Notice. The landlord also highlighted "repeated late payment of rent" on a copy of a 1 Month Notice to put the tenant on notice that repeated late payment of rent is cause to end a tenancy.
- On September 2, 2014 the landlord knocked on the door and he did not answer the door even though the landlord could tell he was home because she observed the blind in his bedroom window moving. Later, she observed the tenant in the driveway as he was leaving the property and she went out there to ask about the rent. The tenant told her that he had not withdrawn the rent the previous day because it was too hot and that he would go get it. The tenant returned later that day with the rent.

The tenant recalled being sick and receiving rice from the landlord but denied that rent was ever paid late. The tenant submitted that the landlord's receipts were fraudulent. The tenant acknowledged that he had received several rent receipts from the landlord but he did not retain all of them. The tenant pointed to a letter the landlord wrote to him on June 2, 2014 and suggested that the landlord would have mentioned late payments in that letter if that were an issue.

I was provided a copy of the June 2, 2014 letter as evidence. The content of the letter pertains to the imposition of a \$20.00 rent increase and that the tenant was "responsible to pay the full amount of rent for June 2014."

The tenant was asked whether he had banking records that would show the withdrawal of rent on or before the 1<sup>st</sup> of the month to corroborate his position. The tenant responded by stating

that he could obtain such records but that he would not provide them as evidence as this would amount to an invasion of privacy. The tenant was informed that certain information such as the balance of funds in the account could be omitted. The tenant again refused to provide banking records citing an invasion of privacy as the reason for his refusal.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. To be considered repeatedly late paying rent, Residential Policy Guideline 38 provides that at least three rent payments must be late.

The landlord provided three rent receipts indicating rent for the months of September 2013, April 2014 and September 2014 was paid late. Despite receiving the landlord's evidence for this proceeding, the tenant did not provide documentary evidence to refute her evidence and relied largely on allegations that the receipts were fraudulent. Had the tenant withdrawn his rent money at the bank or an ATM on or before the 1st of every month, as he claimed, I find it reasonable that the tenant would provide documentation available to him to refute the landlord's evidence, yet he refused to provide such.

I also found the landlord's testimony concerning payments in July, August and September 2014 to be very detailed and specific and I preferred her version of events over the tenant's blanket denial.

I have considered the letter of June 2, 2014 as referred to by the tenant; however, I am satisfied that the issue of repeatedly paying rent late became more consistent and troublesome after that letter was issued. Therefore, I find the absence of any reference to prior late payments in the letter does not mean rent was always paid on time as suggested by the tenant.

Given the evidence before me, I find the landlord has satisfied me that the tenant has repeatedly paid rent late and I uphold the 1 Month Notice to End Tenancy for Cause issued on September 14, 2014. As a result, the tenant's Application for Dispute Resolution is dismissed.

Section 55(1) of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a Notice to End Tenancy and the application is dismissed or the Notice to End Tenancy is upheld; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

I find all the criteria of section 55(1) have been met and I grant the landlord's request for an Order of Possession effective November 30, 2014.

Conclusion

The 1 Month Notice to End Tenancy for Cause dated September 14, 2014 has been upheld. Pursuant to section 55(1) of the Act, the landlord has been provided an Order of Possession effective November 30, 2014 as requested.

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: November 06, 2014

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Residential Tenancy Branch

