



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 1 Month Notice to End Tenancy for Cause, (the "Notice") issued on December 31, 2014.

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.

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.

### Preliminary matter – January 23, 2015

At the outset of the hearing the tenant stated that she did not receive the evidence package from the landlord. The landlord stated the evidence package was left at the tenant's door and the tenant must have received the package as they later received their envelope back from the tenant.

At the hearing the landlord sent the evidence package to the tenant by email, which the tenant confirmed receipt. The evidence package was largely email correspondence between the parties. The tenant requested an adjournment to review the evidence and if necessary file rebuttal evidence.

As I have reviewed the evidence and have found the evidence relevant, I find that it appropriate in this case to adjourn this matter to ensure the tenant has a fair opportunity to review the evidence. Therefore, I adjourned this matter to my next available date.

As the tenant has received the landlord's evidence by email at the hearing, the tenant has until January 30, 2015, to submit their response to the Residential Tenancy Branch and the landlord.

### Preliminary matter – February 11, 2015

At the outset of the hearing the landlord confirmed receipt of the tenant's documentary evidence filed on January 30, 2015.

At the outset of the hearing the tenant indicated that they filed further evidence on February 10, 2015. The tenant confirmed that evidence was not provided to the landlord.

As the evidence was not provided to the landlord, and was filed after the timeline provided above, the document filed on February 10, 2015, was excluded. However, as the document appeared to be a statement of the tenant, the tenant was informed they can provide that evidence verbally when it was her turn to give testimony.

### Issue to be Decided

Should the Notice to end tenancy issued on December 31, 2014, be cancelled?

### Background and Evidence

The tenancy began on September 1, 2013. Rent in the amount of \$770.00 was payable on the first of each month. A security deposit of \$385.00 and a pet damage deposit of \$385.00 were paid by the tenant.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on January 31, 2015.

The reason stated in the Notice was that the tenant is repeatedly late paying rent.

The landlord testified that the tenant was late paying rent as follows:

- Rent for December 2013, was paid on December 24, 2013;
- Rent for January 2014, was paid in two payments. \$500.00 on the 13<sup>th</sup> and \$270.00 on the 25<sup>th</sup>;
- Rent for February 2014, was not paid in full until March 2014;
- Rent for March 2014, was not paid until March 3, 2014;
- Rent for April 2014, was not paid until April 24, 2014;
- Rent for July 2014, was not paid until July 15, 2014;
- Rent for October 2014, was not paid until October 17, 2014;
- Rent for November 2014, was not paid until November 26, 2014;
- Rent for December 2014, was not paid until December 10, 2014; and
- Rent for January 2015, was not paid until January 4, 2015.

The tenant testified that on the morning of November 24, 2013, she was in a vehicle accident and suffered a concussion and soft tissues injuries. The tenant stated despite her best efforts to work, she was laid off from her job and became reliant on employment insurance ("EI") and child support.

The tenant testified that she requested a change of date for rent payments, but her request was denied by the landlords and has struggled ever since to pay rent on time; however, all rent has been paid and there is no rent owed.

The tenant testified that rent was not paid on time for the following just cause:

- Rent for December 2013, was not paid until December 27, 2013, as she was not aware until December 27, 2014, that her rent cheque bounced as she had forgot to transfer funds to the account due to the accident that occurred in November 2014;
- Rent for January 2014, was paid in two payments, because on January 5, 2014, she had a high fever and blacked out in the shower. When she went to the doctor afterwards, it was determined that she had to be off work indefinitely;
- Rent for February 2014, was not paid on time because she had not received her child support payment and her income had depleted by 40%;
- Rent for March 2014, was not paid on time because her income had been depleted by 45% and she asked if she could make a payment on the 10<sup>th</sup> and the balance before the end of the month;
- Rent for April 2014, cleared on the 4<sup>th</sup> of April therefore was deposited on the 1st;
- Rent for July 2014, was not paid until the 26<sup>th</sup> because she was laid off work on May 9<sup>th</sup> 2014 and EI was not received until the 26 July 2014;
- Rent for October 2014, was not paid until October 17, 2014 because her bank account was illegally tampered with and money was taken;
- Rent for November 2014, was not paid until November 26, 2014, because she had switch EI programs as she decided to do the self-employment program and because of this switch, EI made an error;
- Rent for December 2014, was paid on time as it cleared on the 2nd
- Rent for January 2015, was not paid until January 4, 2015.

The tenant testified that she also feels that the landlord is not treating her fairly as other occupants in the same complex pay their rent late.

The landlord responded that the tenant has provided no proof that she is treated anyone differently. The landlord stated they also have the right to make alternate arranges with other occupants as they are not related to this tenancy agreement.

### Analysis

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

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

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

Under section 26 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.

Under the Residential Tenancy Policy Guideline 38, a landlord may end a tenancy where the tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify notice.

In exceptional circumstances the reasons for the lateness may be considered by an arbitrator, such as an unforeseeable bank error.

I accept the tenant was in an accident on November 24, 2014 and genuinely forgot to transfer the appropriate funds into her account due to her circumstances for December 2013, rent. Therefore, I accept the tenant had an exceptional circumstance that was unforeseeable.

I do not accept the tenants reasoning for not paying rent on time for January 1, 2014. The evidence of the tenant was rent was not paid on time due to an accident that occurred on January 5, 2014, when she blacked out in the shower; however, rent was already due and owing at that time. Further, the tenant's testimony conflicts with the documentary evidence, as on December 24, 2013, the tenant sent an email to the landlord which reads in part,

"Please hold January's cheque of \$770 until January 11<sup>th</sup> as I get paid that day"

[Reproduced as written.]

Therefore, I find the tenant was late paying rent for January 2014.

Even if I accept the tenant's income was depleted by 40% to 45% for the months of February 2014 and March 2014, due to the above accidents. This was foreseeable as the tenant was no longer working after January 5, 2014, and it was the tenant's responsible to make alternate arrangements to ensure her rent was paid on time for any subsequent months. Therefore, I find the tenant was late paying rent for February 2014, and March 2014.

I also accept the documentary evidence the email dated April 24, 2014, in the email the landlord asked the tenant if they could deposit the last cheque for April 2014, however, the tenant responded that if they could please wait until the tenant could see what commission she would receive for the month. This statement leads me to believe rent for April 2014, was not paid on the 4<sup>th</sup> as indicated by the tenant. The tenant did not provide a copy of the cancelled cheque. Therefore, I find on the balance of probability that the tenant was late paying rent for April 2014.

Although it was unfortunate that the tenant was laid off from her employment on May 9, 2014, it was foreseeable that she would not receive her first payment from EI for approximately 4 to 6 weeks. It was the tenant's responsible to make alternate arrangements to ensure her rent was

paid on time for subsequent months. Therefore, I find the tenant was late paying rent for June 2014 and July 2014.

While in normal circumstance if a bank account was illegally tampered with and money was taken by fraud, and the bank was correcting this legal activity by having the transactions reversed, I would determine that to be an exceptional circumstance as it was unforeseeable.

However, in this case the tenant has provided no documentary evidence that her account was illegally tampered with on October 1, 2014 and October 3, 2014, as no documentary evidence, such as a letter from the bank or police were submitted to support this claim.

Further, the description detail of the items in the chequing account statement where money was alleged to be taken by fraud has the same description detail as in the previous month's statements. This leads me to believe that these were not transactions that were obtained by fraud. As the tenant had blacked out all other transactions, including balances, there is no way for me to determine if there was sufficient money in the account when rent was due, even if I accept the tenant's version, which I do not. I find the tenant has failed to prove on the balance of probability that rent was late due to an exceptional circumstance. Therefore, I find the tenant was late paying rent for October 2014.

While I accept the tenant transferred programs within the EI program, it was the tenant's responsibility to ensure rent was paid for November 2014. While the tenant alleged the error was the government's fault, the letter submitted as evidence is insufficient as it does not say the error was due to their actions, it simply says "your report has been rejected on the system so we are re-inputting the reports today".

I do not accept the evidence of the tenant that December 2014, rent was paid on December 2, 2014, as the email dated November 26, 2014, confirms that the tenant borrowed money to pay November 2014, rent and the cheque for November 2014 was now cashable, which leads me to believe it was rent for November 2014, that cleared her account of December 2, 2014. Therefore, I find the tenant was late paying rent for November 2014.

Finally, in the email date November 26, 2014, the tenant asked the landlord to hold the December 2014, rent cheque. It was not until December 10, 2014, that the tenant sent another email to the landlord which indicated that the December 2014, rent cheque was now cashable. Therefore, I find the tenant was late paying rent for December 2014.

In light of the above, I find the tenant has been repeatedly late paying rent. Therefore, I find the Notice issued on December 31, 2014, is a valid Notice under the Act.

As the tenant has paid rent for February 2015, I find it appropriate in this case, to extend the effective vacancy date in the Notice from January 31, 2015 to February 28, 2015, pursuant to section 66 of the Act. The tenancy will legally end in accordance with the Act, on February 28, 2015.

### Conclusion

The tenant's application to cancel the Notice, issued on December 31, 2014, is dismissed.

As rent has been paid for February 2015, I find it appropriate to extend the effective vacancy date of the Notice to February 28, 2015.

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: February 12, 2015

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Residential Tenancy Branch