



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC OPC FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) To refund an illegal rent increase pursuant to section 43; and
- c) To recover filing fees for this application.

Service:

The Notice to End Tenancy is dated January 20, 2015 to be effective February 28, 2015 and the tenant confirmed it was served personally on her. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that they received an illegal rent increase, the amounts of the increase and the amount of refund, if any, to which they are entitled?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 2006, it is a month to month tenancy, rent is \$925 a month and a security deposit of \$412.50 was paid in two amounts, that is \$100 paid on June 16, 2006 and \$312.50 paid on June 19, 2006. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant is repeatedly late in paying rent;
- b) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- c) The tenant has put the landlord's property at significant risk.

The landlord provided evidence of the Notice to End Tenancy, a rental ledger showing payments since 2010 (the date of the last lease), relevant pages of former leases and letters between the parties, a letter to the landlord regarding rent payment due "within the month" (and not on the first), disputing letters concerning rent increases and the distribution of the hydro bill, Notices of Rent Increases, receipts for taxes and utilities and emails from other occupants of the rental property to the landlord complaining of problems with this tenant. The tenant submitted on her application that "the eviction notice [was] for removal of a locked mailbox".

The first cause listed on the Notice to End Tenancy was for repeated late payment of rent. I elected to proceed on this cause. The parties appeared to have a history of disputes and were very contentious with each other in the teleconference. The landlord's rental ledger shows the tenant paid rent in full and on time from January 1, 2010 to May 1, 2010. Partial payments began in June 2010 with usually two payments made within the month (but often not equal payments) but 3 in April 2011 and 3 in May 2013. The landlord notes there was a ten day Notice to End Tenancy issued in January 2012 and in the past in January, February, March and August 2007 and in November 2008 and March 2009. She said she got tired of issuing them for the tenant would pay her rent/utilities within the allowable time to cancel them and it was a lot of work to prepare and serve them.

The tenant said the Notices were usually for unpaid utilities as she disputed the distribution of the bill between herself and the lower suite tenants. She said that she had an oral agreement with the landlord that rent cheques were to be picked up on the first of each month but the rent was in the form of two postdated cheques; it was a longstanding arrangement and the husband of the owner told her that was fine. She acknowledged that she was sometimes late in payment because of ongoing arguments.

The landlord and her husband denied making oral agreements outside of the lease provisions. The husband said he often came to pick up the rent and the tenant would not have it. He said they never gave permission for partial payments. The landlord said the fact that they issued Notices to End Tenancy for unpaid rent contradicted what the tenant said; she said when they issued the Notices, the tenant would pay the rent within the allotted time so they felt frustrated at having to do this extra work to collect the rent. She notes the tenancy agreements through the years have obligated the tenant to pay

rent on the first of the month and also to pay 55% of the utility bill, although the tenant constantly argued about this. She noted that all the rent increases were in accordance with the Act although the tenant disputed these as well. She requests an Order of Possession if the tenant is unsuccessful in this application.

When I pointed out the preponderance of evidence regarding late payment, the tenant said she could send in further evidence such as bank transactions. She also alleged some of the numbers in the rental ledger were incorrect. I refused to allow more time to submit additional evidence as evidence of her bank transactions or numbers are irrelevant to the issue of late payment of rent. She agreed in the hearing that she paid in two or three payments in the month and had no agreement in writing to do that. Also, I noted she submitted her application on January 26, 2015, she had copies of the landlord's evidence and ledger, she had sufficient time to send in a dispute to the landlord's evidence, and she submitted approximately 12 pages of late evidence mostly concerning her ongoing issues with the basement tenants. She addressed the issue of late rental payment in a few sentences: a) "I have paid my rent within the verbal understanding that I have with my landlord and am willing to return to the first of the month within a reasonable amount of time and b)"I have only received writing for 2 out of 8 notices for unpaid rent and utilities and the notices were mainly for the utilities problem that this landlord does not want to change". I note that b) the second sentence appears to be noting that she only got two written demands for payment for utilities.

When I asked the tenant why she was claiming \$225 on her application, she said she was waiving this claim. She had asked for it to dispute illegal rent increases but she now realizes the rent increases were within the permitted increases in the Act.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the first cause cited, namely, that she was repeatedly late in paying her rent. I find the landlord's credibility well supported by the detailed rental ledger and the fact that several Ten Day Notices to End Tenancy were issued for unpaid rent spanning the years from 2007 to 2012. I find also the fact that the tenant paid in full on the first of some months, paid two partial payments of different amounts in some months and three partial payments in some months is inconsistent with her statement that she had an oral arrangement with the landlord to give them two post dated payments on the first of each

month or that it was a long standing practice. She also stated in the hearing that she did pay some months “later because of arguments”.

I find the landlord has satisfied the onus of proving on a balance of probabilities that the tenant was repeatedly late in paying her rent and that they therefore have cause pursuant to section 47 of the Act to end the tenancy. Section 38 of the *Residential Policy Guidelines* state that three late payments is a minimum number to justify a notice under this provision. I find the tenant had many more than the minimum number.

Although other causes were cited in the Notice to End Tenancy, I find there is sufficient evidence under the first cause so it is moot to consider all the other causes. I dismiss the application of the tenant to cancel the Notice to End Tenancy dated January 20, 2015. The tenancy is ended on the effective date of the notice which is February 28, 2015. As the landlord requested an Order of Possession if the tenant was unsuccessful in setting aside the notice, I find the landlord is entitled to an Order of Possession in these circumstances pursuant to section 55 of the Act.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on February 28, 2015. An Order of Possession is issued to the landlord effective February 28, 2015. No filing fee is awarded to the tenant.

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

