



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC, FF

### Introduction

In the first application the tenant Mr. J.O. seeks to cancel a one month Notice to End Tenancy dated April 7, 2015, given for alleged repeated late payment of rent.

In the second application the landlord seeks an order of possession against both tenants pursuant to the Notice.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenants have been repeatedly late paying rent?

### Background and Evidence

The rental unit is a four or five bedroom house. The tenancy started in July 2014 for a three year term. The monthly rent is \$3000.00, due on the first of each month. The landlord holds a \$2000.00 security deposit and a \$2000.00 pet damage deposit.

The landlord testifies that the tenants have been late paying rent in nine months since the start of the tenancy. She says she did not receive the rent in full for each month until August 21, September 4, October 14, November 20, "the end of" December, January's rent on February 6 and February's on February 25, March 2 and April 6.

The attending tenant thinks that March rent may have been paid on time and that April's rent was delayed by the fact of the Good Friday and Easter Monday holidays.

He says that he has the money to pay but that his funding comes from Europe and there have been problems transferring it on time. He says that he has now arranged the transfer of a significant amount of money and that late payment should not be problem anymore.

### Analysis

Residential Tenancy Policy Guideline #38 "Repeated Late Payment of Rent" sets out the law and interpretation applied by the Residential Tenancy arbitrators. It provides:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

I find there have been at least seven late rent payments since July 2014 and that the tenants have been "repeatedly late" paying rent.

I find that whether or not the tenant Mr. J.O.'s bank transfer problem was an exceptional circumstance, it was not unforeseeable after the first or second occurrence.

### Conclusion

The tenant Mr. J.O.'s application is dismissed.

The Notice to End Tenancy was a proper and valid Notice and has resulted in the ending of this tenancy on May 31, 2015. The landlord will have an order of possession.

I authorize the landlord to recover the \$50.00 filing fee for her application from the security deposit she holds.

This decision was rendered orally at hearing and 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: May 31, 2015

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Residential Tenancy Branch

