



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remax Discovery Real Estate  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord company attended the hearing. Another person, who identified herself as a new owner of the rental unit also joined the call, but her attendance was opposed by the tenant, and was excused upon my determination that the person was not a party or a witness with respect to this dispute.

The tenant and the landlord's agent gave affirmed testimony and the tenant provided evidentiary material in advance of the hearing. The parties were given the opportunity to question each other with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy issued by the landlord was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord's agent** (hereinafter referred to as the landlord) testified that this month-to-month tenancy began on May 1, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$1,200.00 per month is payable on the 1<sup>st</sup> day of each month according to the tenancy agreement, and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 as well as a pet damage deposit in the amount of \$300.00, both of which are still held in

trust by the landlord. A copy of the tenancy agreement has not been provided by either party.

The landlord further testified that she personally handed to the tenant a 1 Month Notice to End Tenancy for Cause on July 13, 2015. A copy was also mailed to the tenant. A copy has been provided and it is dated July 13, 2015 and contains an effective date of vacancy of August 31, 2015. The reason for issuing the notice is: "Tenant is repeatedly late paying rent." The landlord testified that the tenant is continually late paying rent, and tenants can drop off rent payments to the landlord's office or email payments if that is more convenient. In this case, the tenant has been late with rent, having paid as follows:

- September 28, 2015;
- August was paid the first working day of the month;
- July 8, 2015;
- June 15, 2015;
- May 15, 2015;
- April 16, 2015;
- March 23, 2015;
- February 13, 2015;
- January 9, 2015; and
- December 13, 2014.

Some payments for 2014 were also late.

The landlord further testified that the rental unit had sold and the landlord was going to issue a 2 Month Notice to End Tenancy for Landlord's Use of Property but the sale fell through so the tenant was not served at that time. The tenant has since been served with such a notice.

**The tenant** testified that rent has always been paid by the 15<sup>th</sup>, and the landlord said that was okay because that is the day the money is sent to the owner.

The tenant's husband passed away on March 14, 2015, and the tenant knew that the rental unit had been sold but didn't know who to pay rent to. The landlord's agent said she'd provide an address but never did and didn't collect rent for September. The tenant received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which contained an address for the landlord and the tenant paid the rent right away, within the 5 days required, and the notice is of no effect.

Because the landlord agreed that rent could be paid by the 15<sup>th</sup>, the tenant seeks an order cancelling the notice to end tenancy for cause. The 2 Month Notice to End Tenancy for Landlord's Use of Property is a separate issue, which the tenant has also disputed.

### Analysis

Firstly, I make no findings of fact or law with respect to the 2 Month Notice to End Tenancy for Landlord's Use of Property. That is a separate issue not contained in the application before me.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the 1 Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

No one has provided a copy of the tenancy agreement, however the landlord testified that rent is payable on the 1<sup>st</sup> day of each month, and the tenant testified that the landlord said as long as it was paid by the 15<sup>th</sup> that would be okay. The landlord did not deny that, but testified that there were continuous late payments. However, the landlord testified that some payments were made even beyond the 15<sup>th</sup> day of each month, such as September, April and March, 2015, and 3 late payments is sufficient to warrant ending the tenancy for repeated late rent.

Therefore, the tenant's application must be dismissed. The landlord did not orally request an Order of Possession.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

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: September 30, 2015

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Residential Tenancy Branch

