



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNC, MNR, MNSD, OPT, RR

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; a monetary order; an order of possession; and an order to reduce rent.

The hearing was conducted via teleconference and was attended by the tenant; her two witnesses and the landlord.

On November 12, 2015 the tenant submitted an Amendment to an Application for Dispute Resolution seeking to add that she wished to dispute a 10 Day Notice to End Tenancy for Unpaid Rent she had subsequently received from the landlord. I accept this amendment.

In her Application for Dispute Resolution the tenant sought more time to submit her Application for Dispute Resolution seeking to cancel the notices to end tenancy. The tenant was not certain when she received her Notices to End Tenancy but I note that her Application for Dispute Resolution was submitted to the Residential Tenancy Branch on November 6, 2015.

As the 1 Month Notice was issued on November 1, 2015 and the tenant applied on November 6, 2015, I find the tenant filed her Application for Dispute Resolution within 5 days of receiving the Notice. As a 1 Month Notice allows the tenant 10 Days to submit their Application I find the tenant does not need additional time to submit her Application. I amend her Application for Dispute Resolution to exclude the matter of more time.

In addition, the tenant had applied for an order of possession. However, as the tenant had possession of the rental unit at the time of the hearing, I find this issue is moot and I amend the tenant's Application for Dispute resolution to exclude her request for an order of possession.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's monetary claims or her request for a rent reduction. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for ending this

tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenant's claim for return of her security deposit; compensation for emergency repairs; and reduced rent. I grant the tenant leave to re-apply for these other claims.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

### Issue(s) to be Decided

The issues to be decided are whether the tenant entitled to cancel a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46 and 47 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agreed the tenancy began in December 2014 as a month to month tenancy for a monthly rent of \$650.00 due on the 1<sup>st</sup> of each month with no security deposit paid.

The tenant submitted the following relevant documents:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that is undated and unsigned by the landlord with an effective date of November 20, 2015 citing no unpaid rent that was due on November 1, 2015; and
- A copy of a 1 Month Notice to End Tenancy for Cause dated and signed by the landlord on November 1, 2015 with an effective vacancy date of December 1, 2015 citing the tenant is repeatedly late paying rent and the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I note that the landlord did not submit any evidence to the proceeding. The landlord stated in the hearing that the 10 Day Notice was issued on November 1, 2015 and that his copy is signed and dated. He could provide no explanation as to why the copy submitted by the tenant was not signed or dated.

The landlord submitted that the tenant has failed to pay rent on the day that it was due on several occasions over the course of the tenancy. He submits that she has done so on at least 4 occasions within the last year. The tenant acknowledges that she has been late paying the full rent on approximately 2 occasions.

The landlord also submits that the tenant and the occupants of the rental unit upstairs from the tenant had not gotten along during the tenancy. He states that both parties submitted complaints about each other. He states that after investigation he determined that neither party was to blame but simply that the parties could just not get along.

He states that he made a business decision that it made more sense to end this tenancy as it would be easier for the single tenant to move than it would be for the family upstairs to move.

The tenant submits that the occupants upstairs were bothering her during the tenancy and that she had simply tried to work things out with them as best she could. She indicated that the landlord was not willing to interject because the occupants upstairs were related to him.

The tenant's witnesses provided testimony, primarily related to complaints the tenant had in regard to the landlord and the tenancy itself but did not provide any direct testimony regarding the tenant's interactions with the upstairs occupants or the reasons the 1 Month Notice was issued.

### Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

As the only evidence before me is an unsigned and undated notice that does not indicate any amount of rent is outstanding, I find the 10 Day Notice to End Tenancy issued by the landlord is invalid and not enforceable.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant is repeatedly late paying rent; or
- b) The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

As noted above Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The guideline goes on to say that it does not matter whether the late payments are consecutive, however if the late payments are far apart an arbitrator may determine that the tenant cannot be said to be repeatedly late.

When a landlord issues a 1 Month Notice to End Tenancy for Cause and the tenant disputes such a notice the landlord has the burden to provide sufficient evidence to establish that he has the causes as indicated on the Notice to end the tenancy.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

As the tenant has testified that she has only been late on 2 occasions and the landlord submits the tenant has been late on at least 4 occasions, and in the absence of any documentary or other corroborating evidence, I find the landlord has failed to establish the tenant has been late paying rent on at least 3 occasions.

As such, I find the landlord has failed to provide sufficient evidence to establish repeated late payment of rent as a cause to end the tenancy at this time.

In regard to the landlord's position that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, I find, from the landlord's own testimony, neither this tenant nor the upstairs occupants were at fault for causing disturbances to the other occupants in the residential property.

As a result, and in the absence of any other evidence to corroborate his assertions that the tenant unreasonably disturbed the other occupants, I find the landlord has failed to provide sufficient evidence to establish that he has cause to end the tenancy.

Based on the above, I find the 1 Month Notice to End Tenancy for Cause issued on November 1, 2015 is also invalid and not enforceable.

### Conclusion

I order that both the 10 Day Notice to End Tenancy for Unpaid Rent and the 1 Month Notice to End Tenancy for Cause issued in November 2015 are cancelled and this tenancy remains in full force and effect.

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: January 11, 2016

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Residential Tenancy Branch

