



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC

### Introduction

This hearing dealt with an application by the landlord for an order of possession based upon a 1 Month Notice to End Tenancy for Cause. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail deemed February 17, 2016, the tenant did not appear.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession and, if so, on what terms?

### Background and Evidence

This tenancy commenced October 16, 2014, as a three month fixed term tenancy and has continued thereafter as a month-to-month tenancy. The monthly rent of \$750.00 is due on the first day of the month. The tenant paid a security deposit of \$375.00 and a pet damage deposit of \$375.00.

On December 23, 2015, the landlord issued a 1 Month Notice to End Tenancy for Cause. The sole reason listed on the notice was “the tenant is repeatedly late paying rent”. The notice was served on the tenancy by registered mail actually received on December 30, 2015.

The landlord testified that since August of 2015 the tenant has paid the rent on the following dates: August 4, 2015; September 4, 2015; October 9, 2015; November 9, 2015; December 18, 2015; January 4, 2016; February 1, 2016; and March 13, 2016. She provided the tenant with receipts for the February and March payments that were marked “for use and occupancy only”.

### Analysis

Section 47(4) of the *Residential Tenancy Act* provides that a tenant who has been served with a 1 Month Notice to End Tenancy may dispute the notice by filing an application with the Residential Tenancy Branch within ten days after the date the tenant receives the notice.

Section 47(5) sets that a tenant who does not file an application with Residential Tenancy Branch disputing the notice within the time limit is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

This information is set out on the second page of the notice to end tenancy form.

As the tenant did not dispute he is conclusively presumed to have accepted that the tenancy is at an end on the effective date of the notice. Further, *Residential Tenancy Policy Guideline 38: Repeated Late Payment of Rent* explains that three late payments of rent are enough to justify a 1 Month Notice to End Tenancy. Rent payments made after the effective date of the notice were accepted “for use and occupancy only” and did not reinstate the tenancy. Accordingly, the landlord is entitled to an order of possession. As the rent has been paid for March the effective date of the order will be 1:00 pm, March 31, 2016.

#### Conclusion

- a. An order of possession effective **1:00 pm, March 31, 2016**, has been granted to the landlord.
- b. As the landlord was successful on her application she is entitled to reimbursement from the tenant of the \$100.00 fee she paid to file it. Pursuant to section 72(2), the amount may be deducted from the security deposit or pet damage deposit held by the landlord.

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: March 22, 2016

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Residential Tenancy Branch

