



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC,FF

### Introduction

The Tenants applied to cancel a one month Notice to End Tenancy issued for repeated late payment of rent and for cause, and to recover their filing fee for the Application, under the *Residential Tenancy Act* (the “Act”).

Both parties appeared for the hearing by teleconference call, the hearing process was explained and an opportunity was given to ask questions about the hearing process. Both parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. There were no issues raised with respect to the evidence submitted by the parties. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issue

At the outset of the call prior to the hearing even commencing, the male Tenant stated that if he was not successful in this Application that he would take the matter to Supreme Court. It was explained to the Tenant that the Act provides sole jurisdiction to the Residential Tenancy Branch to determine matters that must be submitted to the branch for dispute resolution. This is found in section 58 (3) of the Act. Despite this the Tenant continued to claim he would contact his lawyer and take the matter to Supreme Court. It was explained to the Tenant that he had the right to consult with legal counsel, although it might have been advisable to seek legal advice prior to the hearing, and he may consult with the Supreme Court if he chose to do so.

### Issues(s) to be Decided

Have the Tenants been repeatedly late paying rent?

Have the Tenants caused damage to the rental unit?

Is the Notice to End Tenancy valid or should it be cancelled?

### Background and Evidence

This tenancy began on December 1, 2014, and was for a fixed term to conclude on November 30, 2017, as set out in the written tenancy agreement. The rent agreed to was \$3,100.00 per month, payable on the first day of the month.

On May 12, 2016, the Landlord issued the Tenants a one month Notice to End Tenancy, with an effective end of tenancy date of June 30, 2016, for repeated late payment of rent and for causing extraordinary damage to the rental unit (the "Notice").

The Notice was personally delivered and the Tenants applied on May 20, 2016, to dispute the Notice. The Tenants applied on time to dispute the Notice.

In evidence both parties submitted documents and statements. There were photographs regarding alleged damage to the rental unit submitted by the Landlord, although it was not necessary to review these, as explained below.

Pursuant to paragraph 7.8 of the rules of procedure, the Landlord presented evidence regarding the Notice first.

The Landlord testified that the rent had been late 11 or 12 times since the tenancy began, including the month of June 2016, the month after the Notice had been served on the Tenants.

The Landlord testified and submitted evidence that the Tenants pay the rent by electronic funds transfer. The Landlord testified that the Tenants had paid their rent late every month between May 2015 and November 2015.

The Landlord further testified that the Tenants had been late paying rent in January of 2016. They paid \$1,000.00 on January 3<sup>rd</sup> and \$1,654.25 on January 4, 2016. The Tenants informed the Landlord they had reduced the rent in order to repair the furnace. The Landlord informed the Tenants they should not be performing repairs to the rental unit without the Landlord's prior approval.

The Landlord testified that the Tenants were late paying the rent in March 2016; the Tenants made partial payments on the first and second day of the month, but had not paid the rent in full until reminded to do so by the Landlord.

The Landlord testified that rent was paid late in April of 2016. Again the Tenants made partial payments over the course of the first few days of the month.

The Landlord then testified that the rent was late in June of 2016, even though the Tenants had been served in May with the Notice.

The Landlord explained she had contacted and spoke with the female Tenant several times about the late payments of rent, over the course of the months it had been late.

In support of her testimony the Landlord provided copies of electronic fund transfer receipts in evidence.

In reply to the Landlord, the male Tenant testified that he never received a registered mail letter from the Landlord warning them about late payments of rent. Nevertheless, he testified that they had been late paying rent on these occasions. He testified that the Landlord dealt with his wife and that he should have been notified as well.

The Tenant testified that the Tenants get paid on the first day of the month and had to wait a day or two for their cheques to clear and make the electronic fund transfer payment of rent to the Landlord. The Tenant testified that they were limited to making payments of \$2,000.00 from their account and have now opened a second bank account in order to make other electronic fund payments.

The Tenant testified that they had many problems with the rental unit and he wanted to talk about those issues. He explained that the Notice also had stated that they had damaged the rental unit. He wanted to explain that they had actually made repairs which the Landlord failed to do.

I explained to the Tenant and the Landlord that it was unnecessary to address those issues in the notice, as the late payment of rent issue had already been fully canvassed during the hearing.

### Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find that the Tenants have paid rent late on four occasions in the first six months of 2016. I find the Tenants have been repeatedly late paying rent and this is a breach of the Act and tenancy agreement. Therefore, I dismiss their application.

Under section 26 of the Act, the Tenants are required to make the rent payment on the day it is due, even if the Landlord is in breach of the Act or tenancy agreement.

Furthermore, there is no obligation for a landlord to notify a tenant by registered mail when there is a late payment of rent. The payment of rent is a material term of the tenancy agreement and it is clear in the subject tenancy agreement before me that rent is due on the first day of the month.

Repeated late payments of rent are cause to end the tenancy under section 47(1) (d) of the Act.

Policy Guideline 38 explains this section of the Act, in part:

*The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.*

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.

I find that the late payments are not sufficiently far apart to conclude the Tenants are not repeatedly late paying rent. There are many instances of late payment of rent to this Landlord by these Tenants during this tenancy.

I further find the Notice to end tenancy was in the approved form: as it was in writing; it was signed and dated by the Landlord; the Notice explained the rental unit address; it set out the effective date of the Notice; and it also stated the grounds for ending the tenancy. Accordingly, I find the Notice was issued in accordance with section 52 of the Act.

As I am dismissing the Tenants' Application, I grant an order of possession to the Landlord pursuant to section 55 of the Act.

Section 55 of the Act requires that I grant an order of possession to a landlord when a tenant's application for dispute resolution is dismissed and the notice complies with section 52 of the Act.

Therefore, I grant the Landlord an order of possession effective at **1:00 pm June 30, 2016**.

Lastly, as I explained to the parties during the hearing, due to the findings on repeated late payment of rent, it is not necessary to determine the issue of the alleged damage to the rental unit. I make no findings on that issue.

#### Conclusion and Orders

The Tenants' Application is dismissed as I found the Tenants have been repeatedly late paying rent. I found the Notice to End Tenancy complies with the requirements of section 52.

Therefore, the Landlord is granted an **Order of Possession, effective at 1:00 pm June 30, 2016**.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 23, 2016

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Residential Tenancy Branch