



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASK INVESTMENTS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF, MNDC, O, PSF, RP, RR

### Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution filed July 18, 2016 wherein the Tenant requested the following relief:

- to cancel a 1 Month Notice to End Tenancy for Cause issued on July 6, 2016 (the "Notice");
- a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, the Regulations or the tenancy agreement;
- an order that the Landlord:
  - provide services or facilities required by the tenancy agreement or law; and,
  - make repairs to the rental unit;
- authorization for the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and,
- to recover the filing fee.

Both parties appeared at the hearing. The Landlord was represented by the building manager, J.G., and the Tenant appeared on her own behalf. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

*Residential Tenancy Branch Rule of Procedure 2.3* provides 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 other claims. 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 rests largely on other facts not germane to the question of whether the Landlord can establish the grounds for ending this tenancy as set out in the Notice. As such, I exercise my discretion to dismiss the balance of the Tenant's claims (save and except for her claim to recover the filing fee) and I grant the Tenant leave to re-apply for these other claims.

### Issue to be Decided

1. Should the Notice be cancelled?

### Background and Evidence

The Building Manager, J.G. testified on behalf of the Landlord.

The residential tenancy agreement was also provided in evidence. The tenancy agreement indicates the tenancy began on May 15, 2014, monthly rent was payable in the amount of \$1,100.00 on the first of the month and the Tenant paid a security deposit in the amount of \$550.00.

J.G. testified that the Tenant was late paying rent five times in a period of eight months and specifically paid rent on the following dates:

- November 13, 2015;
- January 6, 2016;
- May 2, 2016; and,
- July 5, 2016.

On July 6, 2016 the Landlord issued the Notice indicating the Tenant was repeatedly late paying rent. J.G. testified that the Tenant was served the Notice on July 6, 2016.

J.G. stated that he had prior discussions with the Tenant about her rent payments and the Tenant informed him that she had lost her job and that she was awaiting employment insurance benefits. He stated that this appears to have been sorted out but then the Tenant informed him that her bank account was “frozen” by the Canada Revenue Agency. J.G. stated that he attempted to “cover for her” with his bosses but as this continued he realized that the tenancy was not working out and that it was necessary to end the tenancy.

J.G. initially stated that he did not advise the Tenant that her tenancy was in jeopardy until the most recent late payment in July of 2016.

The Tenant testified on her own behalf. She confirmed that, pursuant to her residential tenancy agreement, her rent was payable on the first of the month. She also confirmed that she paid her rent late on the dates as noted by J.G. and that she was not taking issue with the Landlord’s claim in that regard.

The Tenant submitted that J.G. did not strictly enforce the terms of her tenancy agreement and informed her that paying rent late was not an issue. As an example, she stated that she paid the January 2016 rent on January 6, 2016 and that J.G. did not deposit her rent cheque until January 19, 2016. The Tenant also stated that J.G. informed her that being a couple days late was not a problem as other renters also paid late and that on some occasions J.G. had to attend the bank on several occasions to make deposits. She stated that it was her belief that he was lenient with other renters as well.

The Tenant stated that her last late payment in July was late due to “extreme circumstances” because there was a police incident which resulted in her employment insurance cheque not being received in time. The Tenant stated that there was a shooting on Thursday June 30, 2016 near the rental unit and as a result the street was blocked off by the police and as a result Canada Post was not able to deliver her employment insurance cheque. The Tenant stated that as a result of this incident she

called Service Canada to arrange for direct deposit. She then said that she also pulled money out of an RRSP account and offered to pay two month's rent to J.G.

The Tenant also stated that she was very friendly with J.G., and that at no time did he inform her prior to July of 2016 that late payments would result in her eviction. She stated that had he told her this she would have done her best to comply with the agreement and borrowed money from family members if necessary.

Introduced in evidence was a copy of an email exchange between the Tenant and J.G. on July 4, 2016 wherein J.G. informed the Tenant that her late payment in July was unacceptable, that he would be issuing a Notice to End Tenancy, but that he would give her an extra month such that the effective date would be September 30, 2016 in order to give her more time to find alternate accommodation.

The Tenant testified that she at first accepted the Notice and agreed to move out (as evidenced by her response to his email) as she was being bullied and called names by the building manager and that as a result she did not want to live in the rental building anymore. She said that after she thought about it more she realized this was disrespectful and unprofessional and she wished to fight the Notice.

In reply to the Tenant's submissions, J.G. stated that that he was initially lenient with the Tenant as well as other renters. He stated that he let her get away with it for a "little while" after she lost her job and while she got her finances sorted out. He was not able to advise when this leniency started or stopped.

J.G. also describes the day of the shooting, June 30, 2016, as unusual as he claimed to be the one who reported the body. He claimed that at no time did the Tenant inform him that her cheque had not arrived, or that there was any problem. He confirmed that she paid her July 2016 rent on July 4 or 5 2016.

### Analysis

Based on the testimony and evidence before me, as well as the submissions of the parties, I find that the Notice must be cancelled.

While *Residential Tenancy Branch Policy Guideline 38* provides that three late payments are the minimum number sufficient to justify a notice under section 47, I find that the Landlord's agent, in his self-described leniency, created a situation whereby the Tenant, and presumably other renters, did not believe that strict compliance with the tenancy agreement was required.

After a period of leniency, it was incumbent on J.G. to inform the Tenant that he expected strict compliance with her agreement and that failure to do so might result in her tenancy ended. While he testified he communicated this to the Tenant at some point in time, he was unable to state when this occurred. Based on the evidence before me, I am unable to find that J.G. communicated this to the Tenant prior to the July 4, 2016 email, which notably was only two days before issuing the Notice.

J.G. confirmed that the Tenant paid her rent on time for August and September 2016.

In all the circumstances I find that the Landlord has failed to prove the Notice. The Notice is cancelled and the tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

The Tenant is cautioned that further late payments may result in the Landlord issuing another Notice to End Tenancy.

The Tenant, having been successful, is entitled to recover the \$100.00 paid to file her application. Pursuant to section 72(2)(a) of the *Residential Tenancy Act*, I authorize the Tenant to deduct this \$100.00 from her October 2016 rent.

As noted previously in this my Decision, the Tenant is at liberty to reapply for the balance of the relief sought in her application filed on July 18, 2016.

### Conclusion

The Notice is cancelled. The Tenant is entitled to recover the filing fee by deducting \$100.00 from her October 2016 rent. The balance of the relief sought by the Tenant in her application filed on July 18, 2016 is dismissed with leave to reapply.

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 06, 2016

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Residential Tenancy Branch

