



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding INFINITY PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the "Act"), to cancel 1 Month Notice to End Tenancy for Cause, (the "Notice") issued on July 18, 2016 and to recover the filing fee from the landlord.

Both parties appeared, 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 at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began July 2015. Rent in the amount of \$1,100.00 was payable on the first of each month. The tenant paid a security deposit of \$550.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on August 31, 2016.

The reason stated in the Notice was that:

- Tenant is repeatedly late paying rent:

The landlord's agent testified that the tenant has been late paying rent almost every month of the tenancy. The agent stated that they informed the tenant to let them know when they were going to be late, so they would not start the eviction process for unpaid rent, as it is a lot of work for their staff.

Submitted as evidence of late payment of rent are rent receipts. As previous indicate in the decision rent is due on the first of each month. Rent was paid on the following dates at the time the Notice was issued:

- Rent for July 2016, was paid on July 27, 2016;
- Rent for June 2016, was paid on June 15, 2016;
- Rent for May 2016, was paid on May 17, 2016;
- Rent for March 2016, was paid on March 11, 2016;
- Rent for February 2016, was paid on February 11, 2016; and
- Rent for January 8, 2016, was paid on January 8, 2016.

The tenant testified that they do not deny that they have been late paying rent on the above noted dates. The tenant stated that the landlord did not inform them that they would end the tenancy if rent would continue to be late. The tenant stated that the landlord has re-instated the tenancy because the rent for August 2016, and September 2016, was not accepted for use and occupancy only.

The landlord testified that they were not reinstating the tenancy.

### Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant is repeatedly late paying rent.

Three late payments in 12 month timeframe is the minimum amount to support late payments of rent. In this case, I find the tenant has been late paying rent on seven occasions this calendar year. While the tenant claims that the landlord has reinstated the tenancy as they did not write for use and occupancy on the receipt; however, I find to reinstate the tenancy there must be a meeting of the minds of both parties as a party cannot unilaterally create their own tenancy.

In this case, I do not accept the parties agreed to reinstate the tenancy. The tenant has not corrected their actions as rent had continued to be late for each subsequent month

after the Notice was issued. There was no evidence that the landlord agreed to cancel the Notice. A party cannot unilaterally cancel the Notice without the consent of the other party.

I find the Notice issued on July 18, 2016, has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenant's application to cancel the Notice. The tenancy has ended in accordance with the Act.

As the landlord has accepted occupancy rent for the month of September 2016, I find it appropriate to extend the effective vacancy date in the Notice to **September 30, 2016**, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **September 30, 2016, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

### Conclusion

The tenant's application to cancel the Notice, issued on July 18, 2016, is dismissed. The landlord is granted an order of possession

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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 20, 2016

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Residential Tenancy Branch