



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes          CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant's application was filed within the time period required under the Act.

### Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy began on February 1, 2006 with a current monthly rent of \$1136.02 payable on the 1<sup>st</sup> day of each month.

In a previous decision dated July 21, 2016, the landlord was granted an order of possession on the grounds of unpaid rent for the month of June 2016. The tenant did not request a review of the July 21, 2016 decision and order; however, the landlord did not enforce the order and the tenancy was reinstated. The landlord did not enforce the order of possession due to some confusion over the payment of rent for the month of June 2016. Instead, the landlord chose to issue a 1 Month Notice to End Tenancy with an effective date of August 31, 2016. The landlord has since accepted rent from the tenant for the months of June, July and August 2016.

The landlord served the tenant with the 1 Month Notice on July 27, 2016 on the grounds that the tenant is repeatedly late paying rent.

The landlord did not submit any evidence package but instead relied on the tenant's application and submission in support of the grounds to end the tenancy due to repeated late payments.

The landlord submits that the tenant acknowledges in his application that rent was paid late on at least four cases, within 10 days of the due date.

The landlord further submits that the tenant's e-mail submissions support that rent was paid late on the following occasions:

April 2016: an e-mail from the tenant dated April 11, 2016 asking if the landlord had received his replacement cheque in the mail. The landlord confirmed the cheque was received on April 11, 2016 in replacement of the original payment which bounced. The tenant acknowledged in his submission that he had send a replacement cheque and that he sent it in the mail on April 2, 2016.

December 2015: an e-mail from the tenant dated December 3, 2015 stating he found out a cheque had bounced and that he was issuing replacement cheques for this month.

October 2015: an e-mail from the tenant dated October 9, 2015 stating he had found the October cheque in his jacket and would issue a new one with a late fee included.

The landlord also testified that rent for February 2016 was paid on February 26, 2016 but did not provide any documentary evidence in support.

The tenant acknowledged that he has been late paying rent but submits that the examples provided by the landlord are in the past. Further, the tenant submits that the landlord has not provided any evidence or breakdown of the alleged late payments to allow the tenant to properly respond. The tenant submits that the landlord has only referred to dates of late payments without any supporting evidence.

### Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

In this case, the landlord issued the 1 Month Notice pursuant to paragraph 47(1)(b) of the Act, which permits a landlord to terminate a tenancy if the tenant has been repeatedly late paying rent. Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent provides that a minimum of three late payments constitutes cause pursuant to paragraph 47(1)(b) of the Act. In

accordance with this guideline, it does not matter whether the late payments were consecutive; 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.

Pursuant to section 26 of the Act, the tenant has the obligation to pay rent when it is due under the tenancy agreement. The tenancy agreement sets out that rent is due on the first day of each month.

I find the evidence supports that the tenant was late paying rent on April 2016, December 2015 and October 2015. However, I find that the examples of late payments relied on by the landlord are far apart and in this case do not constitute “repeated” late payments. The landlord issued the 1 Month Notice on July 27, 2016 and the only evidence of a late payment provided by the landlord in the calendar year 2016 was for the month of April 2016. The landlord testified that rent was also late in the month of February 2016 but provided no evidence in support. The other examples of late payments provided by the landlord were from October and December 2015.

I find that the landlord has not provided sufficient evidence to justify that it had cause to issue the 1 Month Notice on the grounds of repeated late payments.

### Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice, dated July 27, 2016, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 28, 2016

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Residential Tenancy Branch