



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on September 26, 2016 (the "Notice") as well as to recover the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, 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. Neither party had provided a copy of the Notice in evidence although they agreed as to its contents during the hearing. At the conclusion of the hearing I provided the Landlord with the fax number to ensure she provided a copy of the Notice in evidence. I confirm that the Landlord provided a copy of the Notice shortly after the hearing concluded. No other issues with respect to service or delivery of documents or evidence were raised by either party.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee?

### Background and Evidence

In a case where a Tenant has applied to cancel a Notice for cause *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.

C.F. testified on behalf of the Landlords.

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began May 1, 2016. The tenancy agreement provided that the tenancy was to end on August 31, 2016; the Landlord initialled the box which provided that the Tenant was to vacate the rental unit at the end of the tenancy, although the Tenant failed to initial this box. Pursuant to paragraph 3 of the residential tenancy agreement, monthly rent was payable in the amount of \$900.00, payable on the 1<sup>st</sup> of the month.

The Landlord's issued a 1 Month Notice to End Tenancy on September 26, 2016 (the "Notice"). The reason for issuing the Notice was repeated late payment of rent.

C.F. testified that the Tenant paid the July rent on July 2, 2016. She further testified that the August 2016 rent was paid on August 8, 2016. She also testified that the September rent was paid on September 7, 2016. She stated that the November rent as paid on November 2, 2016 as the Tenant had changed his electronic transfer password without informing the Landlords.

The Landlord testified that she also issued 10 Day Notices to End Tenancy for Unpaid Rent or Utilities on August 2, 2016 and September 2, 2016. Copies of these 10 Day Notices were provided in evidence.

In the "Details of Dispute" section of the Tenant's Application for Dispute Resolution he writes that the Landlord informed him, by text message that he was permitted to pay his July 2016 rent after the 1<sup>st</sup> due to the statutory holiday.

In response, C.V. testified that no such agreement existed. She stated that when the Tenant had yet to pay the July rent she contacted him about the missed payment. She stated that the Tenant responded that he thought he had paid rent early. She said it may not have been a problem if this was only one time, but it has escalated and he has now been late four times in five months. She further stated that she cannot pay her mortgage late.

The Tenant testified as follows.

He stated that he paid his May 2016 and June 2016 rent by e-transfer.

He stated that he did not pay his July 2016 rent until July 2, 2016. During the hearing he stated that "maybe it slipped [my] mind". He also stated that when she asked for payment, he paid it within 10 minutes of her asking. He also stated that the Landlords failed to issue a 10 Day Notice after the July 2016 payment and in their communication wrote "no worries". He stated that he understood this to mean the Landlord was not concerned with the late payment in July.

The Tenant confirmed he was late paying his August 2016 rent. He stated that he had no reason for not paying on time.

In terms of his September 2016 payment, the Tenant stated that he paid his September 2016 rent by post-dated cheque because he was overseas and was not sure if he was going to have access to the internet while he was gone. He further stated that he did not realize that the cheque he wrote was on a closed account. He further stated that he was out of the country and was not able to rectify the situation until his return on September 7, 2016.

The Tenant further stated that the Landlords insisted that he move out at the end of August 2016 and that he informed them that his tenancy was to continue on a month to month basis because he had not initialled the box providing he was to move out. In his written submissions he wrote that he believed the Landlords have been trying to evict him ever since.

The Tenant also stated that he received a one month notice after a dispute about the laundry. He further stated that if they were concerned about his late payment, it would have been understandable that they issue the 1 Month Notice after the September 2016 late payment, instead they waited 20 days and issued it after their disagreement about the laundry.

The Tenant also testified that the November payment was not late, as he provided the Landlord's with a hint for the password. He stated that the password error was the Landlords' not his and that in any case as soon as he was notified that they were unsuccessful in accepting the funds he rectified the situation.

The Landlord responded that the Tenant knew he had changed his password in November and that the Landlord did not have the ability to accept the payment. She

also stated that in any case, he was late three times and they pay their mortgage on the 5<sup>th</sup> of the month.

### Analysis

Section 47 of the *Residential Tenancy Act* sets out how a Landlord may end a tenancy for cause. Section 47(1)(b) reads as follows:

**47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

*Residential Tenancy Branch Policy Guideline 38--Repeated Late Payment of Rent* provides in part as follows:

“...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

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision...”

After careful consideration of the evidence before me, the testimony of the parties and on a balance of probabilities, I find that Landlord has met the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice. I find that the Tenant has been repeatedly late paying rent and that as a consequence the tenancy is ended.

I find the Tenant was late paying rent in July of 2016, August of 2016 and September of 2016.

I prefer the Landlord’s testimony with respect to the July 2016 payment. Notably, on his application the Tenant alleged an agreement existed that he was permitted to make this payment after the July 1<sup>st</sup> statutory holiday. Yet, in his testimony he stated that it had “slipped his mind”. He then suggested that the Landlord’s text message of “no worries” implied they were agreeable to his late payment. The Landlords deny such an agreement existed. The Tenant bears the burden of proving such an agreement existed and in consideration of the evidence and testimony of the parties, I find he has failed to meet this burden. I find that the rent was due on July 1, 2016 and the Tenant simply

failed to pay as required. While he paid after being reminded by the Landlord, it is the Tenant's responsibility to pay rent when due. It is not the Landlord's responsibility to remind or follow up with the Tenant when payment is late.

The Tenant admitted he had no reason for paying the August rent late. I find that he failed to pay his rent in August when required.

I further find that the Tenant was late paying his September 2016 rent. While he took steps to provide a post-dated cheque while he was out of the country, that cheque was dishonoured and therefore payment was not made until September 7, 2016.

Having satisfied me that the Tenant paid rent late three times in 2016, I find, based on section 47 and *Policy Guideline 38* that the Landlord has proven cause to end the tenancy for repeated late payment of rent. I need not consider whether the November 2016 payment was made on time.

The Tenant's application is dismissed. Pursuant to section 55 of the *Residential Tenancy Act*, I grant the Landlord an Order of Possession effective 1:00 p.m. on November 30, 2016. Having been unsuccessful, the Tenant's request to recover his filing fee is similarly dismissed.

### Conclusion

The Tenant's application to cancel the Notice is dismissed. The Landlord is granted an Order of Possession.

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: November 22, 2016

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Residential Tenancy Branch