



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC MNDC FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on October 4, 2016. The Tenants filed seeking an order to cancel a 1 Month Notice to end tenancy for cause; for \$585.00 monetary compensation for damage or loss; and to recover the cost of their filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and both Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each person was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord acknowledged receipt of the Tenants' application; hearing documents; and documentary evidence. The only issue raised by the Landlord, regarding service or receipt was that the documents were not received until October 25, 2016. The Landlord stated she was of the opinion that the application was not served within the required timeframe. The Landlord then stated she was prepared to proceed with hearing as scheduled.

While the *Act* does stipulate the application must be served upon the other party within 3 days of filing it; the *Act* does not provide a remedy if it is not served within 3 days. That being said, the Residential Tenancy Branch Rules of Procedure provides the Arbitrator the authority to determine how to proceed. As such, after consideration that the Landlord was prepared to proceed with the scheduled hearing, I accepted the Tenants' documentary submissions, and each person's oral testimony, as evidence for these proceedings.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenants' application I have determined that I will not deal with all the dispute issues the Tenants have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application

are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenants' request to set aside or cancel the Landlord's Notice to End Tenancy issued for cause and I dismiss the balance of the Tenants' application, with leave to re-apply.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

- 1) Has the Landlord met the burden of proof to uphold the 1 Month Notice issued September 30, 2016?
- 2) If so, when is the Landlord entitled to possession of the rental unit?

#### Background and Evidence

The parties entered into a month to month written tenancy agreement which commenced on July 1, 2016. As per the written agreement rent of \$1,950.00 was payable in advance on the first of each month. On June 17, 2016 the Tenants paid \$975.00 as the security deposit.

The Landlord testified the Tenants have paid their rent late since the onset of the tenancy. She received rent payments via email transfers as follows: July 2016 rent in two payments: \$650.00 on July 1, 2016 and \$1,300.00 was received on July 3, 2016. August 2016 was received in two payments: \$650.00 received on July 28, 2016 and \$1,300 received on August 3, 2016. September rent was received in two payments: \$650.00 received on August 30, 2016 and \$1,300.00 received on September 3, 2016.

The Landlord argued that she does not have to chase after the Tenants for their rent payments and when they failed to pay the first three months' rent on time she personally served the Tenants a 1 Month Notice to end the tenancy on September 30, 2016.

The 1 Month Notice was issued pursuant to section 47 of the *Act* with an effective date of November 1, 2016. The reason listed on the Notice was "Tenant is repeatedly late paying rent."

The Landlord submitted that since issuing the 1 Month Notice the Tenants paid their October rent in two payments: \$1,850.00 paid October 1, 2016 and the balance owed was paid sometime later in October. The November 2016 rent was paid in full on November 1, 2016.

The Landlord testified that after she served the Notice the Tenants told her they were disputing the Notice through arbitration. She said she had always intended on pursuing the notice so had no conversations with the Tenants about the Notice while she waited for this hearing.

One Tenant suggested that the Landlord submitted the dates of when she received the email transfers and not the dates when they were sent. In regards to the July 2016 rent they asserted the rent was sent to the wrong email address on July 1, 2016 due to a clerical error in the spelling of the Landlord's name. They suggested the Landlord agreed that that clerical error could happen to anyone.

The Tenant's confirmed there had been late payments sent towards rent on August 2, 2016 and September 2, 2016 at 4:00 a.m. In addition, their October 2016 rent was short paid by \$50.00 due to a communication error between the two Tenants themselves and was paid in full shortly afterwards.

The Landlord pointed to the Tenant J.H. written statement in evidence which confirms they had paid their rent late in July, August, and September 2016.

The parties were given the opportunity to settle these matters, pursuant to section 63 of the *Act*. However, an agreement could not be reached.

### Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Residential Tenancy Policy Guideline 38 provides that 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. I concur with this policy and find it is relevant to the issues before me.

Under section 26 of the *Act* a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this *Act*. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the *Act*.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the *Act* and I find that it was served upon the Tenants in a manner that complies with the *Act*.

Upon consideration of all the evidence presented to me, I find there is sufficient evidence to prove the reason for issuing the 1 Month Notice; as there were three consecutive late payments of rent (July, August, and September). In addition, October's rent was also paid late, despite the Tenants being served the 1 Month Notice on September 30, 2016. I agree with the Landlord that she is not required to chase the Tenants to have them pay their rent. The burden lies upon the Tenants to ensure their rent is paid in full and on time. Accordingly, I dismiss the Tenants' application to set aside the Notice and to recover the filing fee, without leave to reapply.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

After consideration that the Tenants have paid to occupy the rental unit for the Month of November 2016, I issue the Landlord an Order of Possession effective **November 30, 2016, after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

### Conclusion

The Tenants' request for monetary compensation was dismissed, with leave to reapply. The Tenants' request to cancel the 1 Month Notice was dismissed, without leave to reapply, and the Landlord was issued an Order of Possession effective November 30, 2016.

This decision is final, legally binding, and 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 25, 2016

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Residential Tenancy Branch

