



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a One Month Notice to End Tenancy for cause and to recover the filing fee from the landlords for the cost of this application.

The tenant, the landlord and the landlord's agent attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

### Issue(s) to be Decided

Is the tenant entitled to an order to cancel either of the One Month Notices to End Tenancy for Cause?

### Background and Evidence

The parties agreed that this month to month tenancy started on January 01, 2013. The tenant owns his mobile home and pays a monthly pad rent of \$300.00. Rent is due on the 1<sup>st</sup> of each month.

The landlord's agent testified that the tenant was served a One Month Notice to End Tenancy for cause (the Notice) on December 15, 2016 by posting the Notice to the tenant's door. A copy of the Notice has been provided in documentary evidence by both parties. The Notice has as effective date of December 30, 2016. The Notice provided one reason to end the tenancy as follows:

- 1) The tenant is repeatedly late paying rent.

The landlord's agent testified that the tenants has been late with his rent in 2016 five times. The landlord listed the months' late rent payments:

January, 2016 – Stop payment on rent cheque; rent paid at the end of January, 2016

February, 2016 – NSF cheque; cash received on February 12, 2016

May, 2016 – Stop payment on rent cheque; cash received on May 12, 2016

September, 2016 – NSF cheque; cash received on September 12, 2016

December, 2016 – rent paid on December 05, 2016.

The landlord's agent testified that due to these repeatedly late rent payments throughout 2016 the tenant was served the Notice to end his tenancy. The landlord therefore request that the Notice is upheld and seek an Order of Possession for April 30, 2017.

The tenant disputed the landlord's evidence and testified that the landlord's agent had served the first One Month Notice on December 13, 2016. This Notices provided one reason that the tenant has breached a material term of the tenancy agreement that was

not corrected within a reasonable time after written notice to do so. The tenant testified that this was to do with complaints about his dog.

The tenant agreed that the landlord served him with a second One Month Notice to End Tenancy on December 15, 2016. The tenant testified that with regard to the unpaid rent; last year he did run into some banking problems but his rent has never been late more than a few days. The landlord also states that December, 2016 rent was late yet the receipt states it was paid on December 01, 2016. The tenant testified that he takes his responsibilities seriously to pay his rent on time but as he works out of town he does occasionally run into problems. The stop payment cheques were the banks fault as were the NSF cheques and these were unavoidable.

The landlord's agent testified that with regard to the receipt for December's rent payment; this was made up on December 01, 2016 in anticipation of the tenant paying his rent on that date as the tenant does not like to wait around; however, the tenant did not come and pay until December 05, 2016 and the landlord's agent did not change the date on the receipt.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 20 of the *Manufactured Home Park Tenancy Act* (Act) concerning payment of rent:

*20. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The tenant has the responsibility to ensure rent is paid on the first day of each month as agreed by the parties as the day of the month that rent is due. I am satisfied from the

evidence before me that rent has been repeatedly late including, January, February, May, September and December, 2016. The tenant has insufficient evidence to show that he did pay rent for December on the day it was due or that any stop payments or NSF cheques were as a result of an error made by his bank.

I refer the parties to the Residential Tenancy Policy Guidelines #38 which states, in part, that the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a Notice under these provisions.

I find the tenant has been repeatedly late paying rent on at least five occasions in 2016. Consequently, I find the tenant's application to cancel the Notice cannot succeed and is therefore dismissed.

I refer the parties to s. 48(1) of the *Act* which states:

**48** (1) *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 manufactured home site if*

*(a) the landlord's notice to end tenancy complies with section 45 [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.*

I find the Notice does comply with s. 45 of the *Act* and as I have dismissed the tenant's application to cancel the Notice I issue the landlord an Order of Possession effective as requested on April 30, 2017 pursuant to s. 48 of the *Act*.

With regard to the Notice issued on December 13, 2016, As I have issued an Order of Possession to the landlord based on the reason given on the Notice issued on December 15, 2016 I am not required to deal with the reason given on the Notice issued

on December 13, 2016 as this tenancy will end based on repeatedly late payment of rent.

As the tenant's application is dismissed I find the tenant must bear the cost of filing his own application.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on April 30, 2017. This Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: February 07, 2017

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Residential Tenancy Branch