



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. The tenant sent the hearing package to the landlord via registered mail on February 9, 2017. The tenant orally provided the registered mail tracking number as proof of service and a search of the tracking number showed that the landlord picked up the registered mail on February 24, 2017. I was satisfied the landlord was notified of this proceeding and continued to hear from the tenant without the landlord present.

The tenant subsequently received two 10 Day Notices to End Tenancy for Unpaid Rent, on February 28, 2017 and March 2, 2017, respectively. The tenant submitted an Amendment to an Application for Dispute Resolution to dispute each of the 10 Day Notices. The Amendments were put in the mail slot in the door of the landlord's office/residence on March 2, 2017 and March 3, 2017 respectively. The tenant testified that the landlord's mail slot in an ordinary way to give rent or other communication to the landlord. Under the Rules of Procedure, an Amendment is to be served no later than 14 days before the scheduled hearing date; however, in this case the 10 Day Notices were received less than 14 days before the scheduled hearing and I found the tenant filed an Amendment without delay. Although the tenant served the Amendments upon the landlord in a manner that does not comply with section 89 of the Act, service did comply with section 88 of the Act, and I find it reasonable that the landlord was put on notice that the 10 Day Notices would be dealt with during this hearing. As such, I deemed the landlord sufficiently served with the Amendments under the authority afforded me by section 71 of the Act and I amended the tenant's Application to deal with the 10 Day Notices.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause dated January 25, 2017 be upheld or cancelled?
2. Should the 10 Day Notices to End Tenancy for Unpaid Rent dated February 28, 2017 and March 2, 2017 be upheld or cancelled?

Background and Evidence

The tenancy started November 1, 2015 and the monthly rent was set at \$890.00 payable on the first day of every month.

The tenant submitted that the landlord had tried to increase the rent by \$60.00 per month but the tenant objected to the unlawful increase. On December 31, 2017 the landlord issued a Notice of Rent Increase to the tenant that appears to comply with the Act and the rent increase limitations. The Notice of Rent Increase provides that the rent will increase to \$921.93 effective April 1, 2017. The tenant stated she has no issue with this Notice of Rent Increase and will be paying the increased amount starting April 1, 2017.

On January 25, 2017 the landlord issued a 1 Month Notice to End Tenancy for Cause to the tenant with an effective date of February 28, 2017 ("1 Month Notice"). The landlord indicated the reason for ending the tenancy is "non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order". The tenant received the 1 Month Notice in the mail on January 30, 2017 and the tenant filed to dispute the 1 Month Notice within the time limit for doing so. The tenant stated she has not received an order under the legislation, has not been to a previous dispute resolution proceeding, and the landlord has not responded to her requests for an explanation. The landlord did not provide any response for this proceeding and did not appear at the hearing.

On February 28, 2017 and on March 2, 2017 the landlord issued 10 Day Notices to End Tenancy for Unpaid Rent ("10 Day Notices") to the tenant. The first 10 day notice indicates the tenant failed to pay \$77.43 in rent as of February 1, 2017. The second 10 Day Notice indicates the tenant failed to pay rent of \$967.43 as of March 1, 2017. The tenant does not know how the landlord calculated these amounts since the rent increase does not take effect until April 1, 2017. The tenant produced a rent receipt showing she paid the February 2017 rent of \$890.00 on February 1, 2017. As for the March 2017 rent, the tenant stated that she had given the landlord a cheque for March

1, 2017 in the amount \$890.00 and a post-dated cheque for April 1, 2017 in the amount of \$921.93 to show the landlord she would honour the legal rent increase. The landlord responded with a very unprofessional and abusive letter indicating he would not accept personal cheques, among other things. The tenant then deposited \$890.00 in cash in the landlord's mail slot on March 3, 2017 in the presence of a witness. The tenant took a photograph of her bank withdrawal receipt, the cash, and a note to the landlord to demonstrate she paid March 2017 rent of \$890.00.

The tenant stated the landlord does not prepare rent receipts but that he has signed rent receipts she has prepared.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

Given the landlord's failure to appear and provide reasons for ending the tenancy for cause, I find the landlord failed to meet his burden to prove the tenancy should end for cause and I cancel the 1 Month Notice to End Tenancy for Cause dated January 25, 2017.

Based upon the unopposed evidence before me, I am satisfied the tenant paid the rent that was due for February 2017 and March 2017 since the rent increase does not take effect until April 1, 2017. Therefore, I cancel the 10 Day Notice dated February 28, 2017 and March 2, 2017 respectively.

Having cancelled all three of the Notice to End Tenancy issued to the tenant, the tenancy continues at this time.

**Since the tenant was successful in this Application, I award the tenant recovery of the \$100.00 filing fee she paid for this Application and I order the landlord to repay this amount to the tenant. The tenant is authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this order and the despite the \$100.00 deduction the rent will be considered paid in full.**

The landlord is cautioned that issuing multiple Notices to End Tenancy without merit or basis may be viewed as a breach of the tenant's right to quiet enjoyment and a basis for the tenant to seek further remedy against the landlord, including monetary compensation.

The landlord is also advised that under section 26(2) of the Act, “a landlord must provide a tenant with a receipt for rent paid in cash”. It is not upon the tenant to prepare the receipt. Nor does the tenant have to ask for a receipt. As provided under section 26(2) a landlord must be prepared to issue a receipt for rent paid in cash whether the tenant requests one or not.

### Conclusion

The 1 Month Notice dated January 25, 2017 has been cancelled. The 10 Day Notices dated February 28, 2017 and March 2, 2017 are also cancelled. The tenancy continues at this time.

The landlord must repay the tenant the \$100.00 filing fee. The tenant is authorized to deduct \$100.00 from a subsequent month's rent to satisfy this order.

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: March 07, 2017

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Residential Tenancy Branch