



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTRIDGE LANDING CENTRE LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNC, AAT, O

### Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- more time to make an application to cancel the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice");
- an Order to cancel the landlord's One Month Notice;
- an Order to allow access to (or from) the unit-site for the tenant or tenant's guests; and
- an order for unspecified other relief.

The landlord's agent (the "landlord") appeared at the teleconference hearing and gave affirmed testimony. The landlord appeared with a witness who was affirmed but who did not provide any oral testimony. The tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matters

The tenant withdrew their claim for more time to make an application to cancel the landlord's One Month Notice; an order to allow access to (or from) the unit-site for the tenant or tenant's guests; and an order for unspecified other relief. The tenant indicated that these claims are not necessary.

### Issue to be Decided

- Is the tenant entitled to an Order to cancel the landlord's One Month Notice?

### Background and Evidence

The undisputed evidence established that a month to month tenancy started on March 1, 2016 pursuant to a written tenancy agreement. Rent in the amount of \$1,300.00 is due on the 1<sup>st</sup> day of each month pursuant to the written tenancy agreement. The tenant paid a security deposit in the amount of \$650.00 on or before the start of the tenancy.

The landlord issued a One Month Notice dated January 31, 2017, with an effective move out date of March 1, 2017. The landlord served a copy of the One Month Notice to the tenant in person by leaving a copy with the tenant on January 31, 2017.

The landlord's reasons for wanting to end the tenancy set out in the One Month Notice are as follows:

- The tenant is repeatedly late paying rent; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

### Repeated Late Payment of Rent

The landlord testified that the tenant was late paying rent for each of the months of June, August, September, October, November and December 2016.

The tenant acknowledged that the written tenancy agreement requires rent to be paid on the first day of each month. The tenant testified, however, that on or about June 1, 2016 the landlord gave the tenant permission to pay his rent between the 6<sup>th</sup> day and the 10<sup>th</sup> day of each month. The tenant testified that if the 10<sup>th</sup> day of the month fell on a weekend, the tenant was allowed to pay the rent on the following Monday. The tenant testified that he paid rent when it was due in accordance with this new agreement except for the month of October 2016 when he paid the rent on the 12<sup>th</sup> day and the 17<sup>th</sup> day of the month. The tenant testified that he had permission from the landlord to pay the rent after the 10<sup>th</sup> and that no penalty for late rent was issued.

The landlord acknowledged that he had agreed to accommodate the tenant's lifestyle by allowing the tenant to pay rent a few days late. The landlord did not recall telling the tenant that he could pay his rent anytime between the 6<sup>th</sup> day and the 10<sup>th</sup> day of each month. Instead, the landlord testified that he allowed the tenant to pay his rent by the 6<sup>th</sup> day of each month. The landlord testified that he never received any advanced notice from the tenant indicating that rent was going to be later than the 6<sup>th</sup> day and therefore no permission was ever requested or given.

There was no written agreement confirming the details of the new arrangement for payment of rent.

On December 13, 2016, there was a further meeting between the landlord and tenant at which time the tenant was put on notice that as of February 2017 his rent will be due on the first day of each month. The tenant provided a copy of an email dated December 13, 2016 sent by the landlord to the tenant confirming these arrangements. The email indicates that the tenant had permission to pay rent for the month of January 2017 on the 5<sup>th</sup> day instead of the first day of the month.

The undisputed evidence established that the landlord did not issue any penalties for late payment of rent nor issue any notices to end the tenancy for unpaid rent.

#### Breach of a Material Term of the Tenancy Agreement

The undisputed evidence established that the landlord sent the tenant a warning letter dated December 7, 2016 notifying the tenant that the landlord has received numerous noise complaints with the most recent complaint arising on December 5<sup>th</sup>, 2016.

The landlord sent the tenant a second warning letter dated December 12, 2016 informing the tenant that the landlord had received further complaints about noise from the tenant's unit. The letter indicates that the landlord asked the tenant to comply with the City bylaw noise laws. The landlord's letter also warned the tenant that if the situation wasn't immediately remediated, additional action would be taken.

The tenant testified that there was a meeting with the landlord to discuss the noise complaint that arose on December 5<sup>th</sup>, 2016 and that the matter was resolved at that meeting. The tenant denies being the source of the further noise complaints that occurred after the meeting. The tenant testified that another occupant was responsible for the disturbances. The tenant had made his own noise complaints to the landlord which were being investigated at the time of the hearing.

#### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

#### Repeated Late Payment of Rent

Estoppel is a legal doctrine under which a party may not be allowed to strictly enforce their legal right if they have established a pattern of failing to enforce this right and another party has relied on this pattern. In order to return to a strict enforcement of their legal right, the party must first give the other notice that they are changing their approach and are now going to strictly enforce the right that was previously waived.

I find that in June 2016 the landlord agreed to accept late payment of rent. While the landlord and tenant disagree as to what date late rent was due, the tenant was not served with a notice to end tenancy for late payment of rent nor charged a penalty for late payments leaving the tenant with the impression that the tenant's late payments were being made in accordance with the agreement reached. Therefore, I find that a new pattern was established for accepting late rent payments which the tenant relied upon.

I find that in order to receive payment of rent on the 1<sup>st</sup> day of each month without fail, the landlord was then required to give the tenant notice that he was changing his approach to strictly enforce the date set out in the tenancy agreement. I find that such notice wasn't given to the tenant until December 13, 2016 as indicated in the email dated December 13, 2016 from the landlord to the tenant. The landlord in the email indicates that he will be enforcing his right to receive payment on the 1<sup>st</sup> day of each month commencing February 2017. The tenant has been paying rent on the 1<sup>st</sup> day of each month since February 2017 as requested.

Based upon the principle of estoppel, I find that the landlord cannot rely on the tenant's repeated late payment of rent for each of the months of June 2016 to December 2016 as cause to end the tenancy.

#### Breach of a Material Term of the Tenancy Agreement

Residential Tenancy Policy Guideline # 8 explains that, to end a tenancy for breach of a material term, the party alleging a breach must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I find that although the landlord did inform the tenant in writing that there is a problem, the landlord did not inform the tenant that the landlord believed the problem was breach of a material term of the tenancy. The landlord only informed the tenant that the problem was a breach of the City noise bylaws.

Furthermore, I find that that the landlord did not inform the tenant in writing that if the problem wasn't immediately remedied that the tenancy will end. The landlord only indicated that additional steps would be taken.

Based upon these deficiencies, I find that the landlord did not provide the tenant with adequate written notice in accordance with the Residential Tenancy Policy Guideline #8. Therefore, I find that the landlord cannot rely upon breach of a material term of the tenancy agreement as cause to end the tenancy.

Based upon the foregoing, I find that the tenant is entitled to cancellation of the One Month Notice. Therefore, I cancel the One Month Notice and the tenancy will continue until such time as it ends in accordance with the *Act*.

### Conclusion

The tenant's application is successful. I cancel the One Month Notice and the tenancy will continue until such time as it ends 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: March 20, 2017

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Residential Tenancy Branch