



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAKEDALE INVESTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on April 3, 2017.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the 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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on October 1, 2014. Rent in the amount of \$1,150.00 was payable on the first of each month.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on May 31, 2017.

The reason stated in the Notice was that the:

- Tenant is repeatedly late paying rent; and
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that the tenant has been late paying rent 16 times since the start of the tenancy. The landlord stated that they spoke to the tenant a few months earlier that they need to ensure rent is paid on time.

The tenant testified that they had the landlord's verbal consent to pay the rent late. The tenant stated that since the landlord informed them that they expected the rent to be paid on time going forward, that they have paid rent for March, April and May 2017, in accordance with their tenancy agreement.

The landlord responded that there was an agreement; however, the tenant was to inform them when they were going to be late with the rent and this was not done on some occasions.

The landlord testified that each time the tenant obtains a roommate, that roommate complains that the tenant's behaviour is inappropriate. Filed in evidence are letters from previous roommates and co-tenants.

The landlord confirmed that they have not received any complaints from any other occupants in the building.

### Analysis

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

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the:

- Tenant is repeatedly late paying rent; and
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Under the Residential Tenancy Branch Policy Guideline #38, 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.

However, in this case the tenant has been late paying rent by a day or two since the tenancy commenced in 2014, which was with the consent of the landlord. It was not until recently that the landlord informed the tenant that they would no longer be agreeable to rent being paid late. I find the tenant had the right to rely upon the landlord's action of allowing the rent to be late.

Further, I find the tenant has not been late with rent since the landlord revoked the verbal agreement. Therefore, I am not satisfied the landlord has met the burden of proof for repeatedly late payments of rent.

However, I caution the tenant that any future late payments of rent may be grounds to end the tenancy.

In this case, the landlord indicated that the tenant's past roommates have made complaints about the tenant's behaviour; however, the evidence supports that is a joint tenancy. Should the tenant, their co-tenant or roommate not get along that is an issue for the tenants to deal with amongst themselves, such as ending the tenancy in accordance with the Act.

There was no evidence submitted by the landlord that the tenant or the co-tenant have unreasonably disturbed any other occupants, such as unreasonable disturbances caused by fighting.

Therefore, I am not satisfied the landlord has met the burden of proof that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Based on the above, I find the evidence does not support the Notice was issued for the reasons stated.

Therefore, I grant the tenant's application to cancel the Notice issued on April 3, 2017. The tenancy will continue until legally ended in accordance with the Act.

Since the tenant was successful with their application, I find the tenant is entitled to recover the filing fee from the landlord. Therefore, I authorize the tenant a onetime rent

reduction from a future rent payable to the landlord in the amount of \$100.00, to recover the filing fee from the landlord.

Conclusion

The tenant's application to cancel the Notice, issued on April 3, 2017, is granted. The tenancy will continue until legally ended 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: May 16, 2017

---

Residential Tenancy Branch